

EXHIBIT O

MAR Hearing Transcript Vol. I (pp 1-151)

STATE OF NORTH CAROLINA
COUNTY OF RICHMOND

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO. 96 CRS 001576

versus

TRANSCRIPT

VOLUME I OF III

DERRICK MCRAE

Defendant

Transcript of proceedings in the General Court of
Justice, Superior Court Division, Richmond County, North
Carolina, at the December 1, 2014 session, before the
Honorable David Lee, presiding.

Patrice B. Lee, CVR-CM

Official Court Reporter

Superior Court

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1 (The case of the State of North Carolina versus
2 Derrick McRae, Richmond County, File No. 96 CRS
3 001576, was called for hearing on December 1,
4 2014. The defendant and all counsel are
5 present.)

6 THE COURT: Good morning. I apologize for being a
7 little bit tardy. This is swearing in day for all politicians
8 that were elected to start are sworn in the first Monday in
9 December, so I was in another county this morning. First,
10 Counsel, if you will state your appearances and we will move
11 forward as expeditiously as we can.

12 MR. HAIGH: Ryan Haigh, for the State.

13 MR. ARBOGAST: Steven Arbogast for North Carolina,
14 Your Honor.

15 MR. LAU: Jamie Lau for Mr. Mcrae and James Coleman
16 for Mr. Mcrae. Theresa Newman is also making an appearance.
17 She is back with Mr. Mcrae now. We would ask the Court
18 respectfully to begin this hearing, Mr. Mcrae's family
19 brought clothes for him to wear today, and we would ask that
20 he be allowed to change into those clothes prior to coming
21 out today, with your permission.

22 THE COURT: I have no problem with that. As you well
23 know, this is a matter before me and I don't necessarily
24 notice clothes, but if you want to do that, that is fine.

25 MR. LAU: That would be fantastic.

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1 THE COURT: Some judges don't appreciate people
2 appearing in court with pants around their ankles or matters
3 of that nature. I don't look, I guess you should do a better
4 job. If he's more comfortable in some street clothes, I
5 certainly don't have any problem with that.

6 MR. LAU: Thank you, Your honor.

7 THE COURT: It'll take me a little while to get all
8 set up. Gentleman, how do you want to proceed? Evidentiary
9 hearings and MARs are few and far between, but it's
10 ordinarily my practice, if you so desire, to allow both
11 defense counsel and the State to make opening statements if
12 you wish to do so, in terms of the forecast or prediction of
13 what you believe the real issues boil down to in the case. I
14 read this file over a period of time, actually, reread the
15 motion last night, so I'll try to call on my memory to pull
16 in as much of this as we can, but I do want to give you an
17 opportunity to make opening statements if you wish to do that
18 and we can get underway. Anything else we need to address?

19 MR. LAU: We actually moved at the beginning of this
20 hearing -- based on some of the State's subpoenas, it appears
21 that they are prepared to call individuals who gave
22 statements to the Rockingham Police Department that didn't
23 testify at trial. We would move now to exclude any testimony
24 from any witnesses, fact witnesses, who did not appear at
25 trial. State versus Peterson makes clear that the

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1 limitation at such an MAR hearing, and I have that case for
2 you. It's the evidence directly relevant to a claim that you
3 can't collaterally try to establish that the outcome would
4 have been the same through evidence of guilt that wasn't
5 presented at trial. So, we would move at the outset on the
6 basis -- I know some of the individuals who gave those
7 statements and did not end up testifying are here in court
8 today on subpoenas from the State, so we would move to
9 exclude any testimony from those individuals at the outset.

10 THE COURT: My recollection is some of what the issue
11 here had to do with some statements or information in the
12 State's file that was not turned over, and that some,
13 perhaps not all those people, testified at the trial on
14 behalf of the defendant.

15 MR. LAU: Only two of those individuals testified for
16 the State.

17 THE COURT: You have reference now of people -- other
18 than those two?

19 MR. LAU: People other than those two.

20 THE COURT: What's the State's position?

21 MR. HAIGH: Your Honor, I'll stipulate to that.
22 There is nobody in the courtroom here today that we
23 subpoenaed that gave a statement that did not testify.

24 THE COURT: Sounds like it may be moot then.

25 MR. LAU: We'll be in agreement then, Your Honor.

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1 THE COURT: We will wait just a few minutes for the
2 defendant then.

3 MR. HAIGH: Your Honor, there is one other thing.

4 THE COURT: Yes, sir.

5 MR. HAIGH: If we could sequester the witnesses, Your
6 Honor.

7 THE COURT: What says the defendant to that request?

8 MR. LAU: We would object simply for the burden it is
9 on the witnesses to be waiting, not knowing when they're
10 going to be called outside the courtroom. We don't think
11 that there is anything that they would hear from prior
12 witnesses' testimony that would change the course of the
13 nature of their testimony.

14 THE COURT: What makes you think that?

15 MR. LAU: Because each individual is going to be
16 testifying to separate events within their own personal
17 knowledge that doesn't build on the prior testimony of the
18 other witnesses. With that said, we would imagine that there
19 is no way in which the other witnesses could corrupt those
20 testifying afterwards. It's a matter of important public
21 significance we have individuals as well who are here to
22 testify who is a state psychologist from Dorothea Dix, a
23 psychiatrist, and her testimony is very unlikely -- as a
24 professional who often testifies on behalf of the
25 prosecution, I can't see any impact on her testimony. Our

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1 position would be that it's unnecessary; but, of course, we
2 would leave it to the Court.

3 THE COURT: With all due respect to any witnesses who
4 may be out there, I'm not so concerned about the
5 inconvenience of them not being in the courtroom, I guess I'm
6 always erring on -- attempting to err on the side of assuring
7 that there is not a problem in that regard if something does
8 come up through the questioning of a witness here that might
9 be the same general area of inquiry that would be asked of
10 another witness who is here. I think the better course would
11 be to sequester at least fact witnesses. What says the State
12 to the -- is it Dr. Wolf or who is that?

13 MR. LAU: It is Dr. Wolf.

14 THE COURT: Any problems with Dr. Wolf remaining
15 here?

16 MR. HAIGH: No, Your Honor, that's fine.

17 THE COURT: I'm going to allow Dr. Wolf to remain,
18 but I would sequester the other potential fact witnesses. In
19 order to do that and make it stick better or have some record
20 of it, I need to know who that is and I need to speak with
21 them and be sure they understand what the rules are with
22 respect to sequestration. Do you have a list of those who
23 you are asking to be sequestered?

24 MR. HAIGH: Your Honor, we haven't been provided a
25 list of Mr. McRae's witnesses.

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1 MR. LAU: The two witnesses that would impact today
2 would be Mr. Edward Tender as well as Robert Voorhees. Those
3 are the two individuals who will be testifying of the folks
4 who are here today. They will testify should time allow.
5 Michael Parker will also be here later today, the former
6 elected DA of the prosecution district, so he would also be
7 an individual that would be subject to that court order.

8 THE COURT: So Mr. Voorhees and Mr. Tender are in the
9 courtroom right now?

10 MR. LAU: Yes. Mr. Tender is here. Mr. Voorhees has
11 not arrived yet.

12 THE COURT: Mr. Tender, I am going to ask that you --
13 when we actually get into the process of hearing testimony,
14 unless you are the first witness called, I'm going to ask
15 that you step out of the courtroom.

16 If we can make some accommodation for him, Sheriff,
17 somewhere else on this floor.

18 We want you to be comfortable, but just out of the
19 abundance of caution, I'm going to ask that you not be in here
20 while these other fact witnesses are testifying. After you've
21 testified, you're welcome to stay as long as you'd like. Once
22 you've testified, there is no bar to your being present for
23 further testimony. Do you understand that? Anything else?

24 MR. HAIGH: Nothing from the State, Your Honor.

25 MR. LAU: Nothing further.

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1 THE COURT: We will just wait for the defendant to
2 come out.

3 THE COURT: The Sheriff makes a good point ladies and
4 gentlemen, this is a specially commissioned session of court
5 for the purposes of hearing a motion for appropriate relief
6 filed on behalf of Derrick McRae, so you may have been
7 subpoenaed or you may be a defendant in the regular ongoing
8 session of criminal Superior Court which is in the next
9 courtroom, in the big courtroom, it' Courtroom E I believe it
10 is. Make sure you're in the right courtroom. If you have some
11 involvement with the McRae matter, you are in the right place.
12 If you have other matters in Richmond County of a criminal
13 nature this morning, then you're probably not in the right
14 place. You need to be in the next courtroom, so just be aware
15 of that.

16 Thank you, Sheriff.

17 MR. LAU: Your Honor, I apologize, if I may,
18 Mr. Thurmond Nelson has arrived in the courtroom. He is also
19 a witness that has been subpoenaed. My understanding is both
20 by the defense and the State, so accommodations would also
21 have to be made for Mr. Nelson as well. Of course, any other
22 witnesses that the State may have, we would ask likewise that
23 they be.

24 THE COURT: All right. Where is Mr. Nelson?

25 MR. LAU: He's in the white shirt in the back row,

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1 Your Honor.

2 THE COURT: Okay. Mr. Wilson, you may have come in
3 late, excuse me, Mr. Nelson, you may have come in late, but
4 I'm going to allow the motion that's been made to sequester
5 the witnesses, so that when we start taking evidence, unless
6 you're called as the first witness, I'm going to ask that
7 you, along with Mr. Tender, be outside of the courtroom and
8 remain outside of the courtroom until you are called to
9 testify. Do you understand that?

10 THE WITNESS: Yes, sir.

11 MR. HAIGH: Your Honor, the only other witness that I
12 see in the courtroom is Mr. Crump. He's been subpoenaed by
13 the State.

14 THE COURT: All right. And what's your position?

15 MR. LAU: We anticipate calling Mr. Crump at the
16 outset of the evidentiary hearing.

17 THE COURT: All right.

18 MR. LAU: So there will be no need to sequester him.

19 THE COURT: Good morning, Mr. Crump. You may stay
20 with us then. You may remain after you testify. Give me
21 just a minute to get this computer set up. All right. Let
22 the record reflect that the defendant, Mr. McRae, is present
23 in the court with us this morning.

24 Good morning, Mr. McRae. I'm doing well. I hope you
25 are.

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1 Also, Ms. Newman has joined us. Good morning, Ms.
2 Newman.

3 MS. NEWMAN: Good morning.

4 THE COURT: As I explained to counsel before you
5 folks came in, it's my practice to allow you, if you wish to
6 do so, to make a brief opening statement before we actually
7 get into the evidentiary hearing.

8 So, Mr. Lau or any of your colleagues, if you wish to
9 make an opening statement on behalf of the defendant, I'll be
10 glad to hear one.

11 MR. LAU: Yes, Your Honor, but apparently we have
12 another witness who has shown up.

13 THE COURT: Okay. All right.

14 MR. LAU: I'm afraid this may occur throughout the
15 day, but Mr. Voorhees has arrived, so we would ask that he be
16 accommodated by the Sheriff.

17 THE COURT: Where is Mr. Voorhees?

18 THE WITNESS: Yes, sir.

19 THE COURT: Mr. Voorhees, a motion was made earlier
20 that witnesses be sequestered in this matter; that is, they
21 be outside of the courtroom during the testimony of other
22 fact witnesses, and you are on that list, so unless, and
23 until you are called to testify -- once the actual testimony
24 commences, I'm going to need to ask that you remain outside
25 of the courtroom until you are actually called as a witness.

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1 Once you have been called and testified, you may remain or
2 you may, with the consent of counsel, be released from your
3 subpoena, but until then, we need to ask that you remain
4 outside once the testimony starts. You're welcome to stay
5 until, I believe, the defendant intends to call Mr. Crump.
6 So, when he's called for, I will need to ask you, as well as
7 these other witnesses whom I've already spoken to, just
8 remain outside of the courtroom until you are called.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Thank you.

11 MR. LAU: Your Honor, this case involves several
12 claims of a constitutional nature and 15A 1420(c)(5) of the
13 General Statutes describes the burden that must be
14 established at this proceeding with respect to those claims,
15 and we must show by a preponderance of the evidence that
16 those constitutional violations have occurred. After we've
17 made that showing, the burden then shifts onto the State to
18 show, by clear and convincing evidence, that it was a
19 harmless error. That Mr. McRae would have been convicted
20 despite the constitutional violations which occurred. I
21 submit to this Court that the evidence is going to clearly
22 show that those constitutional violations occurred.

23 Mr. Crump will get up and he will testify to
24 statements that he did not receive from the prosecutors in this
25 case. Statements that from the state's very own filings were

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1 inconclusive and conflicting. The States says they're
2 conflicting. They are inconsistent and conflicting with
3 respect to Mr. Nelson. We submit to you they are inconsistent
4 and conflicting with respect to Mr. McRae as well.

5 The case that guides these claims is Kyles v Whitley
6 which was decided by the U.S. Supreme Court in 1995. In that
7 case, very similarly, witnesses who didn't testify gave
8 inconsistent statements to the police. The Court found that
9 those were material, and part of the reason they found that
10 they were material was it showed a remarkably uncritical
11 attitude by law enforcement with respect to their
12 investigation, that had the jury known, the jury was
13 unlikely -- or there was a reasonable probability that the
14 outcome would have been different at trial. Importantly, in
15 Kyles versus Whitley, similar to Mr. McRae's case, the Courts
16 reference back to the first trial, the trial in which the jury
17 was hung. There was a mistrial declared. They said that in
18 light of the inconsistent statements from witnesses, like in
19 this case who never testified, in light of those inconsistent
20 statements, they showed that the Government's case was much
21 weaker than that case heard by the first jury that was hung and
22 a mistrial was declared.

23 Thus, they said they had to be material. They had to
24 be prejudicial to the defendant to not have those statements.
25 Here, you will see, like in Kyles, a remarkably uncritical

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1 attitude by law enforcement investigating this case. You will
2 see numerous statements that were taken together, one perhaps
3 could be true, but it's not one statement was truth, all of the
4 remaining statements were false. Yet, there was no attempt to
5 establish which, if any, of these statements were actually
6 true. Mr. Crump never had the materials to challenge the
7 investigation in this case. Kyles is instructed in that matter
8 as well. Kyles says you don't have to call those witnesses
9 themselves to give testimony, you can challenge law enforcement
10 with those statements and you can challenge their
11 investigation. In Kyles, the evidence -- there was in these
12 statements, inculpatory evidence like in the statements we have
13 here. Yet Kyles says that's irrelevant because of what it
14 shows about the police investigation, and here you are going to
15 hear a lot about the police investigation in this case.

16 Second, you will hear Mr. Edward Tender take the
17 stand, and he's going to say, regrettably, during a period of
18 time he was an alcoholic -- a period of time when his life was
19 spiraling out of control -- because of his alcoholism, he did
20 what, unfortunately, criminal defendants do at times, he made a
21 statement which was false implicating Derrick McRae in this
22 case, and as a result of that statement he benefited by serving
23 no time in jail when charged with numerous felonies.
24 Mr. Tender -- you'll also hear that two charges, despite a
25 comprehensive plea agreement that resolved all those felony

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1 charges -- two charges were held open for a period of two
2 years, and those charges were not resolved until two weeks
3 after Mr. Tender gave testimony favorable to the State.

4 The burden on us, with respect to a recantation, is
5 to demonstrate to this Court that the recanting witnesses'
6 testimony today is likely to be true -- more likely to be true
7 than the testimony that was given at trial. In addition to
8 Mr. Tender, you're going to hear the State's very own
9 psychiatrist describe the medical records in this case,
10 describe the pretrial holding of Mr. McRae where he was
11 observed on a 24-hour basis for months prior to his trial as
12 the defendants tried to render Mr. McRae competent by getting
13 him on the right regimen of medications. During the course of
14 those observations -- contrary to what Mr. Tender's testimony
15 was at trial, that Mr. McRae was this black militant adhering
16 to Stokely Carmichael and Malcolm X intent on killing white
17 people -- he made no references to race at any time.

18 Now, these are not interviews from law enforcement,
19 this is observations from the staff at the State's hospital,
20 and he doesn't even know what time that they are paying
21 attention to him, yet, zero references at all, zero indication
22 that there was any racial prejudice from Mr. McRae. In
23 addition to that, the medical records -- when he's well
24 medicated, appropriately medicated and at times when he's
25 experiencing psychosis - indicate that he was withdrawn, a

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1 loner, not someone to talk to others. Unlike the testimony
2 from Mr. Tender, that Mr. McRae approached him, talked
3 regularly to individuals while incarcerated and told him about
4 the crime.

5 In addition, during that period of time, he
6 consistently maintained to anyone, when asked, his innocence in
7 the case, clearly demonstrating that Mr. Tender's testimony
8 would have been completely out of character for Mr. McRae and
9 there is nothing to corroborate and support his testimony.

10 THE COURT: All right. Thank you.

11 MR. HAIGH: Your Honor, the State will reserve its
12 opening statement to just prior to us presenting evidence.

13 THE COURT: Okay. All right. Evidence then on
14 behalf of the defendant.

15 MR. LAU: The defense calls Mr. George Crump, Your
16 honor.

17 THE COURT: Mr. Crump, if you will come up please,
18 sir.

19 The witness, Mr. Crump, was sworn and testified
20 as follows to the examination of counsel.

21 THE COURT: Are there any others in the courtroom who
22 were subpoenaed in this case other than Dr. Wolf? Seeing
23 that there are none, I believe that all the other witnesses
24 --

25 THE BAILIFF: We have one, Judge.

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1 THE COURT: Yes, sir. Your name?

2 THE WITNESS: Jeremy Sturdevant.

3 THE COURT: Jeremy Sturdevant? Is he subpoenaed?

4 MR. HAIGH: I believe that the State may have
5 subpoenaed Mr. Sturdevant, Your Honor.

6 THE COURT: All right. Mr. Sturdevant, I've
7 explained to these others that, because you're a potential
8 fact witness, we are asking that all of those witnesses,
9 other than the witness who is testifying, remain outside of
10 the courtroom until you are called. You will need to remain
11 with us, but if you will just remain outside, there are
12 several others out there that are under the same order.

13 MR. HAIGH: Your Honor, if I may, it sounds like
14 Dr. Wolf will actually be presenting fact testimony as
15 opposed to expert testimony based upon the opening statement,
16 and so, I'd ask that she be removed from the courtroom.

17 THE COURT: All right. What do you say to that
18 Mr. Lau?

19 MR. LAU: Yes. I don't think we ever indicated that
20 she would be doing anything other than that. As a clinical
21 psychiatrist, I don't believe that she would be corrupted by
22 any of the prior testimony or that her viewpoints would
23 change with respect to any of the prior testimony that she
24 hears.

25 MR. HAIGH: Your Honor --

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1 THE COURT: I'm sorry. I thought I understood you to
2 say that you did not have an objection to Dr. Wolf.

3 MR. HAIGH: And that was based upon my understanding
4 that, you know, she was going to provide expert testimony
5 which would allow her to hear the testimony of other people,
6 Your Honor.

7 THE COURT: Okay. Let me ask that Dr. Wolf be
8 sequestered as well.

9 Dr. Wolf, I'll ask that you try to find a
10 convenient place for you to remain.

11 DR. WOLF: I actually do think that my testimony is
12 still related to my giving expert testimony.

13 MR. LAU: There would be some opinion that she would
14 give based on -- or her position as a State Psychiatrist, an
15 expert in psychiatry.

16 THE COURT: Sure.

17 MR. LAU: So it would go to the fact witness as well
18 as expert witness.

19 THE COURT: I guess my point is, would her testimony,
20 as an expert, be the same whether she's in the courtroom or
21 not? Wouldn't it be the same? Wouldn't you expect it to be
22 the same?

23 MR. LAU: Can I take a minute to confirm with Ms.
24 Wolf?

25 THE COURT: Sure.

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1 MR. LAU: Thank you very much, Your Honor. If I may,
2 having talked with Dr. Wolf, there are two things that we
3 would like to inform this Court of. She believes strongly
4 that having reviewed Mr. Tender's prior testimony with
5 respect to Mr. McRae, what he purportedly told Mr. Tender,
6 that it would be important to her professional opinion to
7 hear Mr. Tender's testimony. Moreover, she also will talk
8 about Mr. McRae's behavior over that two-year period, and the
9 fact that he consistently maintained his innocence during
10 that period, and she thinks it is extremely relevant to her
11 testimony to hear the nature of the environmental stressors
12 that he was under as a result of this investigation, the
13 testimony regarding that investigation when she's giving that
14 testimony, and it would be our position that she should be
15 here for that testimony given that that's going to impact the
16 professional opinion she may have with respect to how those
17 stressors impacted Mr. McRae and how they relate to his
18 persistent declarations of innocence while at the State's
19 psychiatric hospital.

20 THE COURT: What says the state?

21 MR. HAIGH: A couple of things, Your Honor. First
22 and foremost, what is proposed by Mr. McRae's counsel is
23 that a witness will be commenting on the veracity of the
24 testimony of another witness which is not permitted.
25 Moreover, the doctor was not -- we were not notified of the

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1 expert witness testifying in this case and given the lack of
2 notice, I believe that she will be precluded from testifying
3 in any expert context anyway.

4 MR. LAU: Your Honor, with regard to notice,
5 obviously, Ms. Wolf has been active in this case that the
6 State is well aware of. Additionally, the State, at the
7 respective competency hearing, stipulated and had in its
8 possession the entire records that Ms. Wolf will comment on
9 from Mr. McRae's pretrial detention. So, any suggestion that
10 they have been unable to prepare for Ms. Wolf testifying
11 today would be a result of their own lack of diligence, not a
12 result of their not having any formal notice. There is
13 nothing in post conviction that says we have to give the
14 State notice that Ms. Wolf is going to testify and again, I
15 emphasize that the State had the very records that Ms. Wolf
16 is going to talk about and their lack of preparation is not
17 our problem. It should be the State's onus to go through the
18 case, to learn the case, to learn the materials in the case,
19 and at the retrospective competency hearing, they were
20 provided the very materials that Ms. Wolf has provided.

21 THE COURT: I'm a little concerned that you suggest
22 the State lacks preparedness or that they ought to do things
23 in a certain manner, Mr. Lau. I think the State has brought
24 a latitude of discretion, as do most any attorneys who appear
25 in court do, what they think is in the best interest, in this

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1 case, of the State, but I am -- did you have anything further
2 that you wanted to add?

3 MR. HAIGH: Just briefly, Your Honor. The issue of
4 competency, to which the doctor testified to, has already
5 been resolved. It was resolved years ago. The matter to
6 which she was involved isn't a matter before the Court. If
7 you look at the claims in the MAR, and you stated that you
8 have, there is nothing in there that resurrects any of those
9 claims associated with the state of mind of the defendant or
10 his competency, so based upon that, I don't even see how that
11 would be relevant, Your Honor.

12 THE COURT: In my discretion, I'm going to allow her
13 to remain here to the extent that she hears other fact
14 witnesses and may herself testify to facts in the case. I
15 think I'm tasked with determining the veracity and
16 credibility of testimony, and I will view that in light of
17 the knowledge that she is in the courtroom when others are
18 testifying. So, I am going to allow her to remain. Anything
19 further?

20 MR. HAIGH: Nothing from the State Your Honor.

21 THE COURT: All right. Mr. Crump, having been duly
22 sworn, he is your witness, Mr. Lau.

23 **DIRECT EXAMINATION**

24 BY MR. LAU:

25 Q Good morning, Mr. Crump. First for the record, can

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1 you state your full name for the court?

2 A George E. Crump, III.

3 Q And Mr. Crump, how are you currently employed?

4 A I'm a general practitioner and that's my sole
5 occupation, and it's my full-time occupation. I practice here
6 at Rockingham.

7 Q And how long have you been practicing here at
8 Rockingham?

9 A I have practiced since August 31st 1977. I'm on my
10 38th year.

11 Q And during the course of your practice, was there a
12 time that you became known to Mr. McRae? That you met
13 Mr. McRae? That you would have represented Mr. McRae?

14 A I met Mr. McRae on or about March 26, 1996. I had
15 been appointed to represent him on a murder case.

16 Q At that point in time, had you represented other
17 individuals with respect to murder cases? Or was this
18 something that you were experiencing new?

19 A I represented quite a few people on murder cases. I
20 got off the State court appointed list in 2006, and I've
21 continued to do a substantial amount of federal criminal law
22 since then. Prior to 2005, I tried ten murder cases to a jury,
23 and that's where ten times a jury was impaneled. One of those
24 cases was a mistrial with Derrick McRae. One case was a
25 capital murder case which at the end of six days, the defendant

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1 pled guilty to second-degree murder. One case was a capital
2 murder case where I was the lead attorney, one case was a
3 capital murder case where I was second, but I have tried ten.
4 I counted Derrick McRae as two, but I've tried ten murder cases
5 to a jury.

6 Q So, for the record, from March 26, 1996, when you
7 began representing Mr. McRae, on or about that time, you
8 represented him through the course of both of his trials in the
9 case in question?

10 A That's correct.

11 MR. LAU: May I approach, Your Honor.

12 THE COURT: Yes.

13 BY MR. LAU::

14 Q Mr. Crump, can you identify the document that I
15 handed to you?

16 A Yes. This is a discovery form, and it is a typical
17 discovery form that the district attorney's office of this
18 district would use back in the mid-90s, and it's a discovery
19 form stating what discovery the district attorney's office
20 furnished to me and when they furnished it to me.

21 Q And is this a true and accurate copy of the form that
22 you have in your file from Mr. McRae's case?

23 A It is.

24 Q And have you had an opportunity, prior to today, to
25 review your file and to determine that it indeed contained all

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1 the materials that are listed here on the general felony
2 discovery report?

3 A No. But let me rephrase that it's actually a
4 surprise answer. I have -- I reviewed my discovery file with
5 very close attention to whether a number of statements which
6 the defendants presented attorneys were furnished to me, and
7 those particular statements were not in my file. So, I have
8 gone through my files several times -- I went through my file
9 at length about an hour and 45 minutes in late 2010, and then I
10 went through them again a little over a month ago, but in going
11 through my file -- what I'm particularly paying attention to is
12 did the state -- did the district attorney's office furnish me
13 those particular statements that Derrick McRae's present
14 lawyers furnished to me. For example, I did look and see if
15 there was a map in my file.

16 Q So we'll come back to that if you don't mind, but let
17 me ask you another question off this general felony discovery
18 form. If you look at the column entitled Faith Giving, it says
19 2-26-1996 in that column, do you believe that you received
20 discovery in this case on 2-26?

21 A No, I didn't.

22 Q And why is it that your understanding is that you
23 didn't receive discovery in this case on February 26, 1996?

24 A I believe I was appointed after February 26, 1996.

25 Q Do you recall the date in which Mr. McRae was

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1 arrested?

2 A He might have been arrested on February 26, 1996 or
3 thereabout. My best recollection without going through a file
4 is that Derrick McRae was arrested at the end of February 1996.

5 Q So, he was arrested at the end of February 1996,
6 based on your recollection?

7 A That's correct.

8 Q If I may Mr. Crump, can you identify the document
9 that I've just handed you?

10 A This is a document signed by Mr. Crawford who was the
11 assistant district attorney stating that they handed or
12 furnished me discovery on the 18th day of November 1996 by
13 placing copies in my mailbox. In my mailbox would be the
14 mailbox in Richmond County, Clerk of Courts Office.

15 Q Can I take you back to Defendant's Exhibit One, the
16 general felony discovery form, the last column that says Notes.
17 Is there a date on there that corresponds to this receipt of
18 discovery --

19 A Yes.

20 Q -- or is close in time to this receipt of discovery?

21 A According to this discovery document, I was furnished
22 oral statements on November 17, 1996.

23 Q Now, is that your handwriting?

24 A No.

25 Q On this general form of discovery?

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1 A No.

2 Q So, is it possible that you received this general
3 felony discovery form sometime after November 17, 1996?

4 A I would believe -- it would be my belief that that's
5 correct. That this was put in my box on or about November 17,
6 1996.

7 Q And yet you did not write that --

8 A I didn't write that.

9 Q -- on there, did you? Thank you. Now, you had an
10 opportunity to review several statements in this case?

11 A That's correct.

12 Q That's correct. Before we get to those statements,
13 if I may, I'd like to hand you another document. Would you
14 mind identifying the document marked Defendant's Exhibit Three
15 for the Court.

16 A Yes. This is the substance of the oral statements
17 which were attributable to Derrick McRae arising out of this
18 murder case which was furnished today by the State of North
19 Carolina, and it is dated November 17, 1996.

20 Q And this substance of all statements -- do you
21 recognize the handwriting?

22 A That's my handwriting.

23 Q Now, is this a true and accurate copy of the
24 substance of oral statements that you --

25 A That is true and correct. It's true and correct.

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1 Q It's true and correct. If you wouldn't mind, can you
2 tell me what you're doing here? Can you explain to the Court
3 why you have these handwritten notations here?

4 A Okay. Let me make a general answer. The State --
5 I'll also answer for myself, if the Court be pleased. The
6 State has a duty to furnish to defense counsel defendant's
7 written statements --

8 MR. HAIGH: Your Honor, I'm going to object at this
9 point. That calls for a legal conclusion and the witness is
10 commenting on the laws as opposed to fact.

11 THE COURT: I'll take that into account, but I'm
12 going to overrule the objection for the purposes of this
13 hearing, but I'll try to separate the wheat from the chaff at
14 the appropriate time.

15 A And also the substance of oral statements by the
16 defendant, which the State intends to introduce into evidence.
17 I take the statement furnished to me, November 17, 1996, and
18 I'm trying to divide this up and figure out where a statement
19 begins and where a statement ends. They have compiled all
20 statements into one paragraph. No separation, no attribution
21 of person one, person two, person three, and I'm trying to
22 figure out, in representing Derrick, who made these statements
23 and the context. And I just analyzed it.

24 BY MR. LAU:

25 Q And at that point in time, you said you're trying to

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1 figure out who made the statements?

2 A That's right.

3 Q When you were given, or asked by post conviction
4 counsel about the statements, which we'll discuss individually
5 next -- that they presented to you in post conviction, did you
6 have those statements?

7 MR. HAIGH: Objection. Vague, Your Honor, as to what
8 statements.

9 THE COURT: All right. I'm going to give you an
10 opportunity to clarify that because I'm not square on what
11 you're asking. If you can be more specific, I'll certainly
12 allow you to make that inquiry.

13 MR. LAU: Certainly, Your Honor.

14 BY MR. LAU:

15 Q Mr. Crump, you were asked by Mr. McRae's post
16 conviction lawyers to review certain statements in this case.
17 Do you recall what statements those were?

18 A Yes.

19 Q And can you tell the court what statements you were
20 asked to review?

21 A The -- Derrick McRae's present attorneys --

22 MR. HAIGH: I'm sorry, Your Honor, it looks like the
23 witness has brought materials up with him on the stand. I
24 ask that those be removed.

25 THE COURT: Mr. Lau, what's your position with

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1 respect to this.

2 MR. LAU: I'm happy to rephrase, Your Honor. I
3 certainly think that it's contemporary to use notes if he
4 wants to testify from them or something that he can testify
5 from. I would gladly rephrase with his own affidavit if the
6 Court would like me to proceed in that manner.

7 THE COURT: At this point, based on your objection,
8 if you want to look at what he's got here, I will let you do
9 that.

10 MR. HAIGH: Thank you, Your Honor.

11 THE COURT: And we will take time to let you review
12 whatever, but then I'm going to allow him to keep them.

13 MR. HAIGH: Certainly. Okay.

14 THE COURT: Mr. Lau, since you may not have reviewed
15 these, you may certainly do so as well.

16 MR. LAU: Thank you.

17 (ATTO RNEYS REVIEW MR. CRUMP'S RECORDS.)

18 BY MR. LAU:

19 Q Mr. Crump, do you still have the exhibits?

20 A I have Exhibit Number Two.

21 Q So, one and three --

22 MR. LAU: Your Honor, we're prepared to proceed, I
23 believe, if the Court is.

24 THE COURT: All right. You've had an opportunity to
25 review all of that?

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1 MR. HAIGH: Yes, Your Honor.

2 THE COURT: Yes, sir. You may continue.

3 BY MR. LAU:

4 Q I'm going to go at this a little differently if I
5 may. Mr. Crump, I'm handing you several statements
6 individually marked as Defense Exhibits 4 through 11. If you
7 wouldn't mind, can you identify Defendant's Exhibit Number 4
8 for the Court?

9 A Defendant's Exhibit Number 4 is a statement signed by
10 Corey Robinson and dated March -- looks like March -- I'm going
11 to guess March 1, 1996.

12 Q Did Mr. McRae's post conviction attorneys ask you to
13 review your file for whether or not you had this statement
14 marked Defendant's Exhibit Number 4?

15 A McRae's lawyers did request that of me.

16 Q And did you have those statements?

17 A No, I did not.

18 Q Were you given this statement by the State prior to
19 Mr. McRae's trial?

20 A No, I was not.

21 Q And how can you be so sure of that?

22 A This is a highly material piece of evidence. Where
23 was the gun involved in the killing? And in my investigation,
24 I had gathered that the defendant, Corey Robinson -- the
25 defendant, Derrick McRae, had sold a gun or given a gun to

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1 Corey Robinson. This statement is diametrically different and
2 this statement is that Corey Robinson got this gun from Julio,
3 which would be Julio Sturdevant, so that's an extremely
4 material difference that I would have been aware of. Also, I
5 talked to Corey Robinson and I went to his residence with my
6 investigator, and as best I recall, got an evasive answer, a
7 polite, evasive don't know anything type answer. And if I had
8 had this, I would certainly have confronted Corey Robinson with
9 well what was Julio's involvement. It's just the way I would
10 have questioned if I had had this statement.

11 Q Now, you said through your investigation you heard of
12 the possibility that Derrick McRae sold a gun to Corey
13 Robinson? Is that --

14 A That's correct.

15 Q Now, did you establish that as a fact or was that
16 based on rumor? What --

17 A That's just some kind of rumor and I'm talking to --
18 don't know where I got it. I did get -- well, I don't know
19 where I got it, I'll say that.

20 Q You didn't get that from Mr. McRae, did you?

21 A No.

22 Q And Mr. McRae, during the course of your
23 representation, steadfastly maintained his innocence throughout
24 the period of time that you represented him?

25 A That's correct.

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1 Q Is there another reason that you know you did not
2 receive this statement? Do you recall what it was -- the
3 policy of the District Attorney's Office -- was at the time
4 with respect to discovery they had turned over?

5 MR. HAIGH: Your Honor, I'm going to object at that
6 point.

7 THE COURT: Well, I'm going to let him answer the
8 question. It's really two questions. I think the latter one
9 is the one you want him to answer?

10 MR. LAU: Yes, Your honor. I'll rephrase.

11 THE COURT: That's all right. I'll let you rephrase
12 it.

13 BY MR. LAU:

14 Q Did you have personal dealings with the District
15 Attorney's Office during this period of time as the defense
16 attorney?

17 A Yes. Until about 2008 when I got off the State Court
18 appointed list, I just had a regular and daily interaction with
19 all my district attorneys.

20 Q And based on your personal experience with the
21 District Attorney's Office, did you become familiar with their
22 practices with respect to discovery?

23 A Yes.

24 Q Can you describe what those practices were?

25 A The practices in the mid-90s, when Ken Honeycutt

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1 was district attorney, and also the practices --

2 MR. HAIGH: I'm sorry, Your Honor, I'm going to
3 object at this point as it goes to propensity which is
4 improper.

5 THE COURT: Okay. I'm going to let him testify as to
6 what his knowledge was of the procedural process.

7 Go ahead, Mr. Crump.

8 A The practice then was the absolute minimum. The
9 absolute minimum that the District Attorney's Office would not
10 give any more than the statute requires, I mean the North
11 Carolina General Statutes. They just give the absolute
12 minimum, the written statements of the defendants, oral
13 statements that they intended to introduce into evidence, and
14 this Defendant's Exhibit Number 3. They would jumble up the
15 oral statements where you had to -- defense attorney had to
16 guess and speculate. I mean, they wouldn't put it on like six
17 different pages or paragraphs. I mean, it's a shell game.

18 Q Can you turn to Defense Exhibit Number 5 and identify
19 what Defense Exhibit Number 5 is?

20 A Defense Exhibit 5 is a statement from Darius Lockard
21 dated February 21, 1996.

22 Q And did Mr. McRae's counsel ask you to review your
23 file to determine whether or not you received Defense Exhibit
24 5?

25 A Yes, attorneys did so. I reviewed my files and this

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1 statement was not in my file prior to trial.

2 Q Did you receive this statement prior to trial?

3 A No.

4 Q Can you identify Defendant's Exhibit 6?

5 A Yes. This is a statement from Larry Parker dated
6 February 27, 1996.

7 Q And were you asked by Mr. McRae's counsel to review
8 your files to determine whether or not you had received
9 Mr. Parker's statement?

10 A I was so asked.

11 Q And had you received Mr. Parker's statement?

12 A No, I did not.

13 Q And did you receive Mr. Parker's statement prior to
14 trial?

15 A No, I did not.

16 Q Had you ever seen it before Mr. McRae's counsel asked
17 you to review your file for --

18 A I never saw this prior to sometime in the latter part
19 of 2010.

20 Q And at that point, what happened in the latter part
21 of 2010?

22 A At sometime, it might have been mid 2010, counsel
23 furnished me with these statements -- it might be six months
24 before -- and counsel asked me for an affidavit. I was
25 extremely sick, the sickest I've ever been in my life. I had

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1 pneumonia four years ago right now. I was just unbelievably
2 sick, and I wanted to finish out the year which my secretary --
3 I normally give my secretary a good Christmas vacation. I
4 wanted this out at the end of the year, and again, I spent
5 about an hour and 45 minutes going through my file and gave an
6 affidavit that these weren't in my file.

7 Q Now, your affidavit said that it was your strong
8 opinion that these were not provided?

9 A It's more than a strong opinion.

10 Q Can you describe that. I mean, do you know with
11 certainty that you did not receive these from the State?

12 A Okay. The ones that you just asked me about, I'm as
13 certain as anything that I didn't receive those.

14 Q And will you move on to Defendant's Exhibit 7. Can
15 you identify Defendant's Exhibit 7?

16 A Defendant's Exhibit 7 is a statement from Serena
17 Parker and it's dated March 31st -- no, I apologize. It's
18 dated February 27, 1996.

19 Q And were you asked to review your file --

20 A I reviewed my file. I didn't have it in it prior to
21 trial.

22 Q Did you receive it from --

23 A I received it from -- in sometime in 2010, as best I
24 recall, it might have been six months, it might have been
25 longer before that affidavit was given.

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1 Q And if you would, can you identify for the Court
2 Defendant's -- and we'll try to speed up a little --
3 Defendant's Exhibit 7?

4 A Well, 7 I just answered.

5 Q I'm sorry, 8.

6 A Eight is a statement from Marlen Maurice Dumas dated
7 February 26, 1996.

8 Q And can you identify Defendant's Exhibit 9?

9 A Nine is a statement from Michael Anthony Ferguson
10 dated March 1, 1996.

11 Q And can you identify Defendant's Exhibit 10?

12 A Defendant's Exhibit 10 is a statement from February
13 27, 1996 by Paul Montes Williams.

14 Q And if you could, Defendant's Exhibit 11?

15 A Defendant's Exhibit 11 is a statement from Tonya, I'm
16 not sure of the middle name, Clark and it's dated February 28,
17 1996.

18 Q Now, with respect to Defendant's Exhibits 8 through
19 11, did you have an opportunity to review your file to
20 determine whether or not --

21 A I did. I did not have those. I did not have
22 Defendant's Exhibits 4 through 11 in my file prior to the two
23 trials when I represented Derrick McRae before a jury in the
24 Spring 1998.

25 Q Have you had an opportunity to review the statements?

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1 A I have.

2 Q And having reviewed the statements, do you have a
3 personal opinion as to whether or not they would have been
4 material to Mr. McRae's defense?

5 A They are all material with different degrees of
6 weight. Some of them I would put a lot of weight on, but they
7 are all material because they are pieces of the puzzle, and I
8 would question each one of them -- had an investigator and we
9 would try to talk to them. It would have made it so much
10 easier talking to somebody if you had a statement they made to
11 law enforcement, but some of them -- they are all material, but
12 some of them have greater weight; some of them lesser weight.

13 Q Is there anything that stands out when you say some
14 of them have greater weight? Can you describe which, if
15 anything, stands out to you about these statements?

16 A Well, there are four of them that are very
17 significant. The first one that is significant is from Corey
18 Robinson, and until I really studied -- in the last month,
19 restudied this file, I was always under the impression, from
20 the street or somewhere --

21 Q Which files?

22 A My file.

23 Q In this case?

24 A In this case. I was always under the impression that
25 the evidence was, or the rumor was, that Derrick sold a gun to

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1 Corey Robinson, and it's profoundly different that Julio
2 Sturdevant sold a gun to Corey Robinson, that's night and day,
3 so that's a profound difference. And there are three
4 statements that are very profound to me or very significant and
5 those are Larry Parker, Maurice Dumas, and Serena Parker.

6 Q Can you explain why each of those are very profound
7 to you or important to you?

8 A In my past opinion, my opinion 1998, it's just -- in
9 order for the State to get a conviction against Derrick, I
10 think the State needs to place Derrick at the scene of the
11 crime. That's extraordinarily important. There is no
12 circumstantial evidence that Derrick did it. Derrick had an
13 extraordinarily strong alibi and some way he's got to be placed
14 at the scene of the crime for a jury to convict, and these
15 three statements place him at the scene. Larry Parker placed
16 him at the scene, Serena Parker places him at the scene, and
17 Maurice Dumas places him at the scene, but they are three
18 inconsistent statements. Larry Parker places the gunshot at
19 10:34. A little bit after that, Serena Parker places the
20 gunshot at 11:30, and Maurice Dumas places the gunshot at
21 12:30. So, these are three people who place him at the scene,
22 and they are three inconsistent statements. And they are so
23 inconsistent that you have to think about well, what's the
24 credibility of the State's evidence. Also, this was brought
25 out on cross-examination; the State never brought this out. It

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1 was critical the time of death. When was the last time we saw
2 Jerry Rankin alive, and he was alive -- his mother talked to
3 him at 10:20. I know that was her testimony on the second
4 trial.

5 My notes reflect that on the first trial she saw --
6 halfway between Hamlet and Rockingham at 10:20, she then drives
7 home and this Larry Parker is of the most -- he is so certain
8 as to the facts that he asserts that Derrick -- that Jerry
9 Rankin came to his house at 10:34 and that's almost an
10 impossibility. It's just very critical. Here is somebody
11 giving the State evidence that's just wrong. I mean, either
12 he's wrong or Jerry Rankin's mother is wrong. One of them is
13 wrong, and it goes to credibility. The other thing is during
14 this trial, the State was trying to show motive, and the motive
15 was Jerry Rankin comes on JFK in a red truck --

16 MR. HAIGH: Your Honor, I'm going to object to
17 nonresponsive at this point. He's commenting on the state of
18 mind of another person as well.

19 THE COURT: I'm going to sustain that at this point.

20 Mr. Crump, just let him ask his next question.

21 BY MR. LAU:

22 Q Mr. Crump, if you knew that the State's file included
23 witnesses that gave several inconsistent statements, as you've
24 testified to, would that have impacted how you represented
25 Mr. McRae?

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1 A Of course it would have.

2 Q And in what way?

3 A You've got to investigate Larry Parker, Maurice
4 Dumas, and Serena Parker. And particularly, Larry Parker is
5 just a wrong statement. You want to know, you know, was there
6 any pressure to bear on him when he gave the statements, how
7 he's correct, and the question is how many people were
8 involved? Larry Parker -- I want to say Larry Parker said six
9 were there and Serena Parker said three. It might have been
10 reversed, but it's a profound difference between Derrick McRae
11 and Thurmond Nelson being involved in this crime and a group
12 being involved. There is a profound difference.

13 Q So, you would have questioned the State's
14 investigation?

15 A Oh, yes.

16 MR. LAU: May I approach, Your Honor.

17 THE COURT: Yes.

18 BY MR. LAU:

19 Q Mr. Crump, I'm going to hand you what's been marked
20 Defendant's Exhibit 12. Can you identify Defendant's Exhibit
21 12 for the Court?

22 A It's a notice that I gave to Derrick McRae, and I
23 wanted it in writing, and I wanted it witnessed to completely
24 tell my evaluation of this case to this young man. And I did
25 that on - I went over that with him on April 23, 1998, and his

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1 first trial started on or about April 27, 1998.

2 Q Is this a true and correct copy?

3 A It's correct.

4 Q If you wouldn't mind turning to Page 4 of Defendant's
5 Exhibit 12, the notice to Mr. McRae. On the top of Page 4 it
6 says, Forecast of Evidence?

7 A That's correct.

8 Q Would you read that section of your notice for the
9 Court?

10 A Yes. "In the event that Derrick McRae decides to
11 plead not guilty and have a trial, George E. Crump, III makes
12 the following forecast of what he thinks the State's evidence
13 may be and also what Derrick McRae's evidence may be. The
14 Assistant District Attorney named Scott Brewer, who will try
15 the case and prosecute the case on behalf of the State of North
16 Carolina, told George E. Crump, III on Monday, April 20, 1998,
17 that he had three witnesses who will testify that Derrick McRae
18 admitted to each of them that Derrick McRae shot and killed
19 Jerry Rankin. Assistant District Attorney Scott Brewer also
20 said there is one eyewitness who will testify that he observed
21 a Derrick McRae involved in the shooting of Jerry Rankin.
22 Assistant District Attorney stated these four witnesses are in
23 addition to the codefendant, Thurmond Nelson.

24 Based on the information and belief, it is George E.
25 Crump, III's opinion that Thurmond Nelson did make an

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1 incriminating statement to the police about Derrick McRae.
2 Based on information believed, George E. Crump, III believes
3 that Thurmond Nelson told the police that Derrick McRae
4 admitted to him that Derrick McRae shot and killed Jerry
5 Rankin. It is the opinion of George E. Crump, III, and this is
6 just a guess, that Thurmond Nelson will not testify against
7 Derrick McRae, but that the State will call at least a couple
8 of people to say Derrick McRae admitted shooting Jerry Rankin,
9 and the state will call an eyewitness who will testify that he
10 saw something incriminating relating Derrick McRae to the death
11 of Jerry Rankin.

12 Derrick McRae has consistently told George E. Crump,
13 III, that he did not shoot Jerry Rankin. He states he was at a
14 cookout on Friday evening, October 13th and that his brother
15 and his brother's buddies got some liquor and that Derrick
16 McRae was drinking and got very sick. Derrick McRae had to
17 be helped home and Derrick McRae was asleep all evening and
18 came home sick, remained in his house from approximately 9 or
19 10 pm Friday, October 13th until the next day October 14th.
20 There are three family members who stated that they are ready
21 to testify to the above facts on behalf of Derrick McRae.
22 These family members are Derrick McRae's mother, brother and
23 sister. There are four nonfamily members who were present at
24 the cookout who state the same thing that Derrick McRae has
25 stated. These four persons are Antoine Rush, Jeremy

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1 Sturdevant, Jermaine Cobbs, and Renée Dockery."

2 Q Did Mr. Brewer name these witnesses?

3 A No.

4 Q He didn't tell you who the witnesses were?

5 A No.

6 Q If you had Defendant's Exhibits 4 through 11, would
7 you have changed the forecast of this evidence? Would it have
8 been included -- the information provided in the statements?

9 MR. HAIGH: Objection, Your Honor. It calls for
10 speculation.

11 THE COURT: I'm going to let him answer if he has an
12 opinion about that.

13 A It's not a speculation, but it's a little bit
14 different answer. The forecast of evidence would actually have
15 been substantially the same, however, the recommendation of
16 counsel -- let me back that up. In all likelihood, I would
17 have put down the people's names. It was so important. This
18 is a young man, 16, 17 years of age, I'd put down the people's
19 names. What would have been different, I tend to think, is my
20 recommendation. I recommended that Derrick McRae take a plea
21 agreement, and I don't know that I would have made that
22 recommendation if I had those three statements; and again, this
23 is an impressionable 16-year-old person. I'm an experienced
24 lawyer, and I don't know that I would have made that
25 recommendation, or that strong recommendation. It would have

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1 been more left to him because his case would be a much better
2 case than I had thought it was led to believe by the Assistant
3 District Attorney, Scott Brewer.

4 Also, very critical are Maurice Dumas' statement that
5 they were arguing. If there was any way I could have made an
6 argument on second-degree murder and maintained his argument,
7 that would have been very critical if I could get a net
8 underneath him.

9 BY MR. LAU:

10 Q Mr. Crump, I'm handing you what's been marked
11 defendant's Exhibit 13. Is it possible for you to identify
12 Defendant's Exhibit 13 for me?

13 A Defendant's Exhibit 13 is my time sheet, and I-- when
14 these two cases were over, I submitted one time sheet and it's
15 dated May 14, 1998. That was the second (inaudible), and I
16 wanted to get paid. You're a sole practitioner -- I'm
17 laughing, but I see I got that fee certificate in that same
18 week. When you're a sole practitioner, you know, it's hard to
19 ride 171 hours, I chuckle, I got that fee form in that same
20 week for the judge to sign and get it in the mail, but this is
21 my application and I had attached to it my time sheet.

22 Q Now, if you turn in your time sheet to Page 3 on
23 12-3-1997, it's the third row down from the top and it begins
24 with, Visits Residence, can you find that?

25 A Yes.

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1 Q Would you mind reading that for the Court?

2 A Visits residences of Mrs. Rankin, Jeremy Sturdevant,
3 Tony Ferguson, attempted to locate Darius Walker.

4 Q Now, you previously testified that you did not
5 receive the statements of Tony Ferguson or the statements of
6 Darius Lockhart, correct?

7 A No, I did not.

8 Q So, when you are visiting them on 12-3-1997, do you
9 know what their previous statements were to the police?

10 A I don't know. I can't testify that I talked with
11 them on that date. If you look at the next -- what I might
12 have been doing -- it's just 45 minutes, that's a lot to do in
13 45 minutes. What I might have been doing was getting the
14 groundwork to investigate later with those two private
15 investigators. I might have talked with them or I might not
16 have, but I doubt very seriously I talked to Mrs. Rankin, but I
17 might have talked to Jeremy. I might have talked to Tony, I
18 might not have.

19 Q Let me ask you this. Does this change your opinion
20 of whether or not you received those statements from the State?

21 A I didn't receive the statements.

22 Q Thank you. And Corey Robinson's name is also here on
23 your time sheet. Knowing that, does that change your opinion
24 as to whether or not you received Corey Robinson's statement?

25 A No. It just reinforces it because if I had his

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1 statement, I wouldn't be out there on Hummingbird Drive just
2 trying to get an evasive answer. I would have said, "Now,
3 Corey, you told Officer such and such you bought the gun from
4 Julio, tell me what happened."

5 Q Let me point your attention to one more entry on your
6 time sheet. It's on Page 2, it's the third entry up from the
7 bottom dated 9-30-1997.

8 A Yes.

9 Q Can you read what your activity was on 9-30-1997?

10 A Discussed plea negotiations with Ken Honeycutt, 30
11 minutes.

12 Q And this is an accurate description of what you did
13 in this case?

14 A It's not a perfect description. Let me qualify that.
15 I had on this case 171 hours and 30 minutes. I don't pad my
16 time sheet. And I had on that date, 9-30-1997, 30 minutes on
17 the case, and the primary thing that I did in that 30 minutes
18 was talk with Ken Honeycutt, and I very well may have talked to
19 him 30 minutes. Now, I didn't talk to him 35, I don't cheat
20 myself, and also, I didn't have 20 minutes, you know, but the
21 primary thing I did on 9-30-1997 was talk to Ken Honeycutt.

22 Let me say this, what my practice is. I would take
23 files over there -- my office was right across the street. I
24 wouldn't just take one file, count ten minutes walking over
25 there, talk for ten minutes, walk back, and put down 30

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1 minutes. I would take a series of files, normally, and I very
2 well may have talked to him the whole 30 minutes or I might
3 have been sitting there. He might have asked an assistant to
4 go get a file, but in substance, I talked to Ken Honeycutt a
5 significant portion, if not all, of 30 minutes on September
6 30, 1997.

7 Q Thank you. And that was about Mr. McRae's case,
8 correct?

9 A Yes.

10 MR. LAU: If we could just have a minute, Your Honor.

11 THE COURT: Well, I'll tell you what, we're going to
12 take about ten to 15 minutes, and I know I probably shouldn't
13 be commenting on the evidence at this point, but I am
14 encouraged to know that, at least his testimony is, that he
15 does not pad his time nor does he cheat himself when
16 reporting his time. (Laughter) We'll take about a 15 minute
17 break.

18 (Court in recess for break.)

19 THE COURT: All right. You may continue.

20 BY MR. LAU:

21 Q Mr. Crump, I'm going to hand you what's been marked
22 as Defendant's Exhibit 14. Can you identify this exhibit for
23 the Court?

24 A This is a motion entitled Motion for Identity of
25 State's Witnesses, and it is dated April 17, 1998.

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1 Q And what was the purpose of your filing this motion?

2 A I didn't remember that I filed it. It's a good
3 motion though.

4 Q Would you mind taking a minute to review it and see
5 if it refreshes your recollection?

6 A It's a good motion. It makes the allegation that the
7 issue in the defendant's guilt or innocence will be resolved
8 with great degree based on the credibility of State's witnesses
9 and opportunity of State's witnesses to accurately perceive and
10 observe events, and that it's necessary for the defendant to
11 get up there at trial -- it's necessary for the defense to
12 investigate the backgrounds and osmosis of the State's
13 witnesses and also makes this point, which is a good point,
14 that the defendant had been found incompetent to stand trial on
15 three separate occasions. So, it's of paramount importance to
16 be able to interview the State's witnesses.

17 Q We've been through this. So, would you have filed
18 this if you had the witness statements?

19 A I probably would have. I probably would have. A
20 case of this nature, I probably would have. I probably would
21 have.

22 Q I'm handing you what's been marked as Defendant's
23 Exhibit 15. Can you identify Defendant's Exhibit 15?

24 A This appears to be a criminal disposition of Edward
25 Lewis Tender.

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1 Q And during the course of your representation of
2 Mr. McRae, would you have investigated Mr. Tender's criminal
3 background?

4 MR. HAIGH: Your Honor, I object at this point.
5 Foundation hasn't been laid for this exhibit.

6 THE COURT: All right. I'll sustain that.

7 MR. LAU: If we could have a minute, Your Honor.

8 THE COURT: All right.

9 BY MR. LAU:

10 Q Mr. Crump, are you familiar with Defendant's Exhibit
11 15? How these are produced?

12 A Yes.

13 Q What takes place before something like this,
14 Defendant's Exhibit 15, before a copy is provided to counsel,
15 what would you do?

16 A This is an informal bar, and all the defense
17 attorneys have a good relationship with the clerk's office.
18 We've always had a good clerk's office, and I would just go
19 down to the clerk's office -- and I remember talking to Jane
20 Karicka, and I would just ask could I have Edward's record,
21 Edward Tender's record. She would run it off, and they
22 wouldn't hesitate and certify it as a true copy.

23 Q Now, you recognize that stamp on these?

24 A It's stamped a true copy.

25 Q And what does that stamp mean?

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1 A It means that it is true and correct. That this
2 clerk, Yvette Popps, got these records from the clerk's office,
3 on the clerk's computer as to Edward Lewis Tender.

4 Q Is this similar to what you would receive from the
5 clerk's office when you ask the clerk's office for a criminal
6 record check?

7 A It is. I may or I may not get it certified. And I
8 have no reason to doubt authenticity. If I was going to
9 introduce it into evidence, I would get it certified. I might
10 get the record check without it being certified.

11 Q Can you just describe what type of information is
12 reflected in these, perhaps?

13 A You generally had the -- you had the file number, you
14 had the charge, you had, normally, the date of offense, and you
15 had the disposition date in the sentence, just the skeleton
16 information about a case.

17 Q Can you find Case Number 96, CR 352?

18 A I can.

19 Q I believe beginning on Page 30?

20 A That's correct.

21 Q And on that record, can you identify the charge?

22 A Yes. It's the case of Edward Lewis Tender, and he
23 was charged with felonious breaking or entering.

24 Q And on what date was that charge resolved? When is
25 the final disposition of that charge? Is that reflected in

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1 this record?

2 A It is, but I don't see it right now. That
3 disposition date is March 28, 1996.

4 Q Is there another charge for File Number 96, CR 352?

5 A Yes, it is. There was also an additional charge,
6 felonious larceny after breaking and entering.

7 Q And do you see the disposition date for that charge?

8 A March 28, 1996.

9 Q And is there another charge for 96 CR 352?

10 A Misdemeanor probation violation.

11 Q And you see the disposition date for charge?

12 A May 28, 1998.

13 Q You remember when Mr. McRae was found guilty in this
14 case?

15 A The first trial was April 27, 1998, and I don't know
16 whether it was a four-day trial or three day trial. Probably a
17 four-day trial. So, you're talking about the end of April.
18 The second trial it began, over our objections, two weeks
19 later, and that would be on or about May 11, 1998. And I don't
20 think the trial started, the second -- on the second trial
21 until the second day maybe in the afternoon, maybe about the
22 lunchtime and my fee form, which I remember well, I turned in a
23 fee form on May 14, 1998. So, it would be my educated guess
24 that that second trial ended May 14, 1998.

25 Q You wouldn't turn in your fee form until the

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1 completion of the trial?

2 A No, I wouldn't, but I would be -- again, is sole
3 practitioner, by myself, you need these fees, and I would --
4 here's what's critical is, I was trying to get to the judge
5 before an out-of-town judge left, not to come back for a month
6 or six weeks. So, and normally a judge may hang around for a
7 couple of hours, and if my fee form is May 14, 1998, a very
8 educated guess is that the case ended -- it says date of
9 disposition May 14, 1998.

10 Q I was going to say can you turn to Page 7, and does
11 that refresh your recollection on when it was that Mr. McRae's
12 case ended?

13 A May 14, 1998.

14 Q Thank you. Can you find Offense Number 96 CR 424?

15 A Yes, I can.

16 Q If you wouldn't mind, can I back you up to that last
17 page?

18 A Okay.

19 Q Does this record also indicate who is the prosecutor
20 for the State with regards to that misdemeanor probation
21 violation?

22 A Well, the Assistant DA has initials SB. And in all
23 probability that would be Scott Brewer.

24 Q Now, if you can go to the 96 -- did you know any ADA
25 within the district that had the same initials SB?

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1 A It's conceivable there was somebody else. I can't
2 think of anybody with a S. You have Sophia Crawford, and
3 Jonathan Hicks, Michael Parker --

4 Q So, no one comes to mind?

5 A No one comes to mind.

6 Q Let's move on to Record Number 96 CR 424. Can you
7 read the charge?

8 A Obtaining property by false pretense.

9 Q And its disposition date?

10 A March 28, 1996.

11 Q And is there another charge with the same file
12 number?

13 A Misdemeanor probation violation.

14 Q And do you have the disposition date of that offense?

15 A May 28, 1998.

16 Q Does it list the ADA who handled the misdemeanor
17 probation violation?

18 A The ADA had the initials SB.

19 Q If you don't mind going back to Page 2. I'm sorry
20 Page 3, which is the first record 96 CR 352 for felonious
21 breaking and entering. That was disposed of on 3-28-1996.
22 Does that list the initials of a prosecutor there?

23 A The initials SB.

24 Q And that was resolved in March of 1996, correct?

25 A That's correct.

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1 Q And turning the page to the felony larceny, does that
2 list the prosecutor as well?

3 A SB.

4 Q Thank you. And if you would, returning to the first
5 charge for File Number 96 CR 424, which was the obtaining
6 property by false pretenses disposed of on March 28, 1996, is
7 there a prosecutor listed there?

8 A SB.

9 Q SB?

10 A S as in Scott, B as in Brewer.

11 Q Thank you very much. Mr. Crump, I'm handing you
12 what's been marked as Defendant's Exhibit 16. Can I ask you to
13 identify Defendant's 16?

14 A Yes, sir. Criminal record check for Thurman Nelson.

15 Q And do you recognize the stamp at the bottom
16 right-hand corner?

17 A Yes.

18 Q And what does that stamp indicate?

19 A It indicates this is a true and correct copy of these
20 matters obtained of these convictions for Thurman Nelson.

21 Q Now, when Mr. Nelson testified in Mr. McRae's case,
22 did you conduct a criminal record or criminal history on
23 Mr. Nelson or did you ask the clerk's office, as you previously
24 testified, for Mr. Nelson's criminal record?

25 A I cannot remember running a record check on Thurman

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1 Nelson.

2 Q Okay.

3 A I just can't remember. I'm sure I asked him what he
4 had been tried and convicted of, that would be an educated
5 guess.

6 Q Okay. Now, look at Defendant's Exhibit 16. If I can
7 turn your attention to Page 4, which is 96 CR 9369. Can you
8 identify the charge with respect to 96 CR 9369?

9 A Can I have just a minute.

10 Q Sure.

11 A What's the question?

12 Q Can you identify the charge?

13 A The charge is a misdemeanor possess stolen goods.

14 Q And does this indicate an offense date?

15 A The offense date was November 27, 1996.

16 Q And do you understand that to be after the arrest of
17 Mr. McRae and Mr. Nelson?

18 A Yes. It is.

19 Q It is after. But sometime after Mr. Nelson was
20 arrested, as a codefendant in the case with Mr. McRae, he was
21 then cited for possession of stolen goods?

22 A That's right.

23 Q And do you see the disposition date here?

24 A The disposition date was January the 9th 1997.

25 Q Would it have been important to you knowing

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1 Mr. Tender's record at the time he testified?

2 A Is this Mr. Tender or Mr. Nelson?

3 Q I'm sorry. Mr. Nelson. Thank you.

4 A This is -- I respectfully disagree with Judge
5 Stillman, and I was aware of this, and what was amazing to me
6 was that a young man is charged with murder, commits a
7 subsequent offense and just stays out on bond.

8 Q Let me go back if you would, with respect to 96 CR
9 9369, does the CR have any meaning to you?

10 A I believe that all files in Richmond County start off
11 with a CR, probably throughout the state. When the file
12 reaches a Superior Court level, an 'S' would be added and it
13 would be CRS.

14 Q Now, if I ask you to turn the page, would you mind
15 turning the page and can you read the file number on the next
16 page?

17 A You have a CRS.

18 Q And it's 96 CRS 9369, right?

19 A That's correct.

20 Q And can you tell me the charge there?

21 A Here you have a felony possessed stolen goods, felony
22 possessed stolen goods, so these are felonies.

23 Q And what's the disposition date?

24 A The disposition date here is August 26, 1998.

25 Q And the offense date?

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1 A The offense date was the same, November 27th 1996.

2 Q So, on November 27, 1996, the offense is committed
3 and that's after the individuals are arrested and this is
4 resolved before or after Mr. McRae's trial? Do you know?

5 A It appears that Thurman Nelson was charged with three
6 offenses occurring on November 27, 1996. Two of them were
7 felonies. One of them was a misdemeanor, and the misdemeanor
8 was the misdemeanor possession of stolen goods. It's a typical
9 practice on the misdemeanor for attorneys in this district to
10 stipulate -- to plead not guilty, stipulate the guilt, the
11 judge to find guilt on the misdemeanor and appeal it up, and
12 that way you have all three pending in Superior Court and
13 normally, one or more of those is going to wash out. It's
14 going to be disposed of one way or the other.

15 Q So, after that's appealed through the Superior Court,
16 then it's set once again on the court calendar?

17 A It would go on the Superior Court calendar.

18 Q And it wasn't resolved until --

19 A It was not resolved until August 26, 1998.

20 Q Thank you. If I could move you forward to 96 CRS
21 6547, which is Page 9 in the record.

22 A Okay.

23 Q Can you describe the charge on 96 CRS 6547?

24 A The charge is carrying a concealed gun.

25 Q And do you see the offense date?

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1 A August 24, 1996.

2 Q Now, is that before or after you understand
3 Mr. Nelson to have been arrested for first-degree murder?

4 A That would have been after.

5 Q And do you see the disposition date with respect to
6 this charge?

7 A The disposition date on this is January 15, 1997
8 which is before --

9 Q Are you looking at CRS -- 96 CRS?

10 A No. I'm looking at CR. If I turn over to CRS, you
11 got a disposition date later, August 26, 1998.

12 Q So, that would be the same --

13 A It's probably the scenario that the misdemeanors are
14 someway appealed up to Superior Court.

15 Q So, the file resolution was in Superior Court?

16 A That's right. In August, 1998.

17 Q And if I could direct your attention to 97 CRS 1880.
18 Have you found that record?

19 A Yes.

20 Q Can you tell me what -- can you tell me which charge
21 is listed under 97 CRS 1880?

22 A Drive left of center.

23 Q Now, is there a second charge associated with that
24 file anywhere on the next page?

25 A Carrying a concealed weapon.

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1 Q What's the offense date of that charge?

2 A March 7, 1997.

3 Q Is that after Mr. Nelson was arrested for
4 first-degree murder along with Mr. McRae?

5 A That's correct.

6 Q What's the final disposition date on 97 CRS 1880?

7 A August 26, 1998.

8 Q Is that after Mr. McRae's trial?

9 A That's after.

10 Q You practiced in this district for a long time,
11 haven't you?

12 A I have.

13 Q Is it the common practice to have someone out on bond
14 for first-degree murder picked up twice while carrying a
15 concealed weapon?

16 A Let me backtrack. I might have made a mistake. I
17 was arguing -- it might have been on the two carrying a
18 concealed weapon charges -- I was trying to get buys, and it
19 might have been on those two charges that I was arguing rather
20 than the shoplifting case, but --

21 MR. HAIGH: Your Honor, I'm going to object at this
22 time. It calls for speculation and that goes to somebody
23 else's state of mind.

24 THE COURT: I'm going to sustain that objection. You
25 don't need to answer that, Mr. Crump.

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1 MR. LAU: If we may.

2 THE COURT: Yes.

3 MR. LAU: Defense has no further questions, Your
4 Honor. We would move to admit Defense Exhibits 1 through 16
5 into the court record.

6 THE COURT: All right. Let those exhibits be
7 admitted.

8 (Defense Exhibit Nos. 1 through 16 were
9 admitted.)

10 THE COURT: Cross-examination.

11 MR. HAIGH: Yes, sir.

12 **CROSS EXAMINATION**

13 BY MR. HAIGH:

14 Q Now, Mr. Crump, you mentioned that you did ten murder
15 cases up through 2005. At the time of Mr. McRae's murder case,
16 how many murder cases have you done at that point?

17 A I was trying so many murder cases that -- basically I
18 tried murder cases in the 1990s. I tried a capital murder
19 case December 1996, where I was a lead attorney, and that was
20 after I got appointed to this case, and he's on death row right
21 now. I then was second chair in a capital murder case in
22 February of 1997. The lead attorney was in another case, and I
23 was primarily gathering the evidence on that case. I then
24 tried a case by myself, I think, in April of 1997, and then I
25 tried, a year later, I tried Derrick the first time and Derrick

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1 the second time. I tried five murder cases in 18 months.

2 Q Okay. Now, you were only lead counsel on two murder
3 cases prior to Derrick McRae's first case, isn't that right?

4 A No. That is not right.

5 Q I'm sorry. So, how many were you lead counsel in
6 prior to Derrick McRae's case?

7 A Without being smart, I had so many murder cases. I
8 don't know how many, and the DA's office so many times would
9 just charge somebody with capital murder, and I had quite a few
10 murder cases that were pled out. They were capital murder
11 cases that weren't true capital murder cases. There was
12 another case -- this is kind of interesting, I just thought
13 about this. I tried a capital murder case in front of a jury
14 that I'm not even counting, you know, they set it up as a
15 capital murder case, then it comes back second degree.

16 MR. HAIGH: Your Honor, I'm going to call
17 nonresponsive at this point.

18 Q Can you just answer the question in terms of how many
19 cases were you lead counsel on prior to this that actually went
20 to trial?

21 A It would be two.

22 Q Okay. Now, with your experience, presumably, you had
23 a methodology by which you would keep track of the discovery
24 that came to you by the State in each case?

25 A Yes.

1 Q Did you have a ledger that you would use or something
2 of that --

3 A No. No.

4 Q What was your methodology?

5 A I have a six part folder, and it's going to be in one
6 of those sections.

7 Q Okay. But you don't have a primary document that you
8 would list when you received each document?

9 A No.

10 Q So, it's fair to say that you don't have any record
11 of what you received when?

12 A I have an excellent record.

13 Q Can you please share with the State your record?

14 A I have a six part folder. In one section I have my
15 work file, one section I have motions and orders, another
16 section I have discovery, then I have another section mental
17 health, then I have another section first trial and second
18 trial. It's just in a six part folder.

19 Q Right. But you're saying that you don't have any
20 record of when you got each piece of discovery from the State,
21 do you?

22 A I had no reason to --

23 Q It's a yes or no question, sir?

24 THE COURT: All right. Don't be argumentative.

25 Can you answer that yes or no? Do you have a record

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1 of when --

2 A The answer is yes for what Sophia Crawford gave to
3 me. She's Assistant DA. I got it Xeroxed, it's in my file,
4 and I had no reason to disbelieve Sophia Crawford.

5 BY MR. HAIGH:

6 Q So, the only record that you have is something that's
7 prepared by somebody else, is that right? Yes or no, sir.

8 A That's substantially true.

9 Q Thank you.

10 MR. HAIGH: Your Honor, may I approach.

11 THE COURT: Certainly.

12 BY MR. HAIGH:

13 Q I'm showing you what's previously been marked for
14 identification purposes as State's Exhibit 1. Do you recognize
15 that?

16 A I do.

17 Q Have you seen that before?

18 A I have.

19 Q And that is -- can you please identify that for the
20 Court?

21 A This is a written statement by Thurman Nelson dated
22 March 1, 1996.

23 Q And do you recall that statement being entered into
24 evidence in Mr. McRae's first trial, April 27, 1998?

25 A I assume it was, but I don't -- I make that

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1 assumption.

2 Q I'm showing you what's been marked as State's Exhibit
3 2, and that's front and back, sir. Do you recognize that?

4 A I don't know that I've seen this before. I didn't
5 sign -- it's a -- State's Exhibit Number 2 is an evidence log
6 that the clerk signs just verifying what was introduced into
7 evidence, and it shows that Thurman Nelson's statement was
8 introduced into evidence.

9 Q Okay. And the date on that is what? May 1, 1998?

10 A Where? It's the date released May 1, 1998.

11 Q Okay. Now, you were the attorney of record in the
12 first case, is that correct?

13 A That's correct.

14 Q So, you were, obviously, made aware of Mr. Nelson's
15 statement on that date if you hadn't received it before, isn't
16 that right?

17 A In the second trial.

18 Q Let me back up, sir. This is the --

19 A I don't have a transcript of the first trial. I do
20 have a transcript of the second trial. In the second trial, I
21 cross examined Thurman based on his statement. I obviously had
22 the statement in the second trial, and I assume -- I have no
23 reason to believe I didn't have the statement in the first
24 trial.

25 Q Okay. Now, in looking over your file for preparation

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1 for today, did you find Mr. Nelson's statement in your file?

2 A It was not in my file, and that was not in my file,
3 but I was furnished a copy. I either -- I may not have
4 received a file, but during my representation of Derrick McRae,
5 I had this in my hand, and I reviewed it and then cross
6 examined Thurman. It might have been that I just put it back.

7 Q Okay. But you are speculating on that. You really
8 don't know one way or the other?

9 A That's right. That's right.

10 Q Now, what, if any, witness statements or copies of
11 witness statements did you have in your file that were provided
12 by the State?

13 A I had a one page defense copy substance oral
14 statements. That's what I had.

15 Q So, you didn't have any individual statements
16 whatsoever, is that your testimony?

17 A That's my testimony. Furnished from the State.

18 Q I'm showing you what's been marked as State's Exhibit
19 3, and now, the statement of Maurice Dumas that you testified
20 to on direct, this is the statement you are referring to, is
21 that right?

22 A Rephrase the question.

23 Q Okay. On direct examination, you referred to a
24 statement provided by Ms. Dumas, isn't that right? Mr. Dumas,
25 I apologize?

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1 A I call him Maurice Dumas.

2 Q Okay. And this is the same statement, is that right?

3 A I assume it is.

4 Q Okay. Now, I want to start with the first page,
5 fourth line, I'm sorry, fifth line from the bottom. I'm going
6 to read that and please tell me if it's correct. 'Derrick had
7 what looked like a .380 handgun.' Did I state that correctly?

8 A That's what this statement says.

9 Q Okay. Now, on the second page, I want to start about
10 seven or eight lines down with 'Derrick walked on the
11 right-hand side of that line.' Do you see where that starts?

12 MR. LAU: Objection, Your Honor. The purpose of this
13 is to try to establish the veracity of the statement
14 inculpatory evidence. The purpose of this hearing is whether
15 or not Mr. Crump received the statement or not. It's not a
16 matter of what's necessarily within the statement,
17 inculpatory to Mr. McRae.

18 MR. HAIGH: Your Honor, on direct, one of the things
19 that was an issue, clearly, is that how Mr. Crump would have
20 responded to having these statements, and he said that they
21 were material. He already testified on their nature.
22 Moreover, when you're looking at an alleged Brady violation,
23 one of the things to consider is, you know, A. Whether it's
24 inculpatory and what light it puts the case in should those
25 have been provided. So, this is absolutely relevant to what

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1 Mr. McRae's counsel is alleging in this case.

2 THE COURT: I agree with you, and the objection is
3 overruled. Continue. One thing I am going to ask though, if
4 you intend to offer into evidence these State's Exhibits,
5 it's been very helpful to me with the defendant handing up
6 the exhibits as they were introduced so that I could read
7 along with you or look at it for myself. So, after we take a
8 break, I know you may not have copies now, but if you can do
9 that during our lunch break for any exhibit you intend to
10 offer, it's just helpful for me to have those up here.

11 MR. HAIGH: And Your Honor, for the record, this is
12 Defendant's Exhibit 8. That's what we're looking at.

13 THE COURT: Right. I put that together, but it would
14 simply be easier and better for me when reviewing all this if
15 I could have copies. If you don't intend to offer them into
16 evidence that's fine. If you're just going to ask him about
17 them and go no further than that, I don't really need them,
18 but if you intend to offer them into evidence I need to see
19 them.

20 MR. HAIGH: All right.

21 BY MR. HAIGH:

22 Q Now, sir, were you able to identify the line which
23 I --

24 A I did, sir.

25 Q Okay. So, 'Derrick walked up on the porch and he was

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1 pointing his gun and saying, 'Man, I will shoot you. I will
2 shoot you, white boy.' I then heard someone say, 'I'm not
3 bothering you niggers.' I saw fire come from the gun when it
4 went off. After four or five seconds, a second shot was fired.
5 The first shot came from the gun Derrick had in his hand
6 because it was fired from on the porch of the house, and the
7 second one was fired from Thurman, and he was standing on the
8 ground below the porch. After the second gunshot, I heard
9 Derrick say, 'Let's go.' Derrick and Thurman ran down the hill
10 that is in front of the house and started running toward me,
11 and they still had the guns in their hands. I ran into the
12 woods and hid because I was scared they were going to shoot
13 me.' Did I read that correctly correct, sir?

14 A You did. You did.

15 Q Okay. If you would look on the third page, middle of
16 the fourth line and I'm going to start with the Derrick said.
17 'Derrick said, "We know you saw what we did last night, and if
18 you say anything, we will kill you too just like we did him."
19 Did I read that correctly?

20 A You did.

21 Q Okay. Now, on direct you indicated that Mr. Dumas'
22 statement was material and very important to you, is that
23 right?

24 A That is correct.

25 Q Now, understand -- it's fair to say that this witness

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1 inculpates Mr. McRae should the statement be true, isn't that
2 right?

3 A That's correct.

4 Q So, you said earlier that it wouldn't have a
5 bearing -- you said the case was better if you had been aware
6 of the statements previously, right?

7 A It would have been better, yes, much better to defend
8 it.

9 Q Okay. So, you're saying that you would have
10 considered putting Mr. Dumas on the stand to discredit Nelson
11 when he inculpates McRae so clearly?

12 A Can I have a minute?

13 Q Yes.

14 A No. I would not have called Maurice Dumas to
15 testify.

16 Q Okay.

17 A But can I answer my question why it's material?

18 Q Well, I think you already did?

19 A I haven't completely answered it.

20 Q Well, we'll wait for redirect for that. Thank you.

21 MR. LAU: Your Honor, I think the witness should have
22 the opportunity to complete his answer.

23 THE COURT: I have a feeling that somewhere along the
24 line he's going to be asked to follow up on that.

25 Mr. Crump, why don't you go ahead and explain your

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1 answer while it's fresh in your mine and mine.

2 A Somewhere I read that -- it might have been the
3 state's synopsis that there was an argument, that they were
4 arguing. That Derrick McRae was arguing with Jerry Rankin, and
5 that's extraordinarily important when you're talking about an
6 execution, first degree murder, where somebody has smoked crack
7 cocaine and has just passed out and somebody goes and executes
8 him or where there is an argument and you don't know what the
9 other side said because you're getting into second-degree
10 murder.

11 So, I would not have called Maurice Dumas to testify,
12 but I would have investigated, and I would want to know
13 everything he saw, you know, the distance and you want to
14 compare it with Larry Parker who is two hours earlier in time,
15 and Serena Parker who is one hour -- you've got three
16 inconsistent statements. But no, I would not call Maurice
17 Dumas to testify.

18 Q Is it fair to say the risk would be too great in
19 terms of what would come out?

20 A Unless he told me that the officers put words in my
21 mouth, et cetera, et cetera. You just wouldn't do it.

22 Q Now, on the second-degree murder part, my
23 understanding is your analysis is based on the fact that there
24 was an argument between the deceased and Mr. McRae, isn't that
25 right?

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1 A That's right.

2 Q Now, there's nobody's testimony that places the
3 argument on or about the same time as the execution, is there?
4 There is not a single witness that does that.

5 A Somewhere I read --

6 Q We can give you time, if you want to look.

7 A Okay.

8 THE COURT: Why don't we give him about an hour and
9 20 minutes?

10 THE WITNESS: How about you give me about 30 seconds?

11 THE COURT: We're going to go ahead and break for
12 lunch.

13 THE WITNESS: I got you.

14 THE COURT: All right. We'll be in recess, Sheriff,
15 till 2:00.

16 THE BAILIFF: Court will be in recess till two p.m.

17 (Lunch break was taken at 12:30 p.m.)

18 (Court resumes at 2:00 p.m.)

19 THE COURT: All right. Let the record reflect that
20 the defendant is present and all counsel is present.

21 I believe that you had asked a question.

22 And I don't recall, Mr. Crump, if you recall the
23 question that was asked or if you would like that repeated.

24 THE WITNESS: I basically recall the question. The
25 question was whether Maurice Dumas stated in his statement that

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1 Derrick and Jeremy Rankin were arguing. I read his statement
2 and that's not in there, but I was furnished a synopsis of the
3 case when his present lawyers furnished me with the statements,
4 and in that synopsis by law enforcement, they just summarized
5 that Dumas said he heard Jerry and Derrick arguing.

6 BY MR. HAIGH:

7 Q And so -- -

8 A That's where I got that from.

9 Q So, do you have additional information now in front
10 of you that you didn't have previously that we looked at? Is
11 that something that you received after I was able to look at
12 the documents in front of you?

13 A I had it present right here. When I was testifying
14 before lunch, I had this and it was in my group.

15 MR. HAIGH: May I approach, Your Honor.

16 THE COURT: Yes.

17 Q All right. So, this is not -- what you're referring
18 to is not reflected in Mr. Dumas' statement, but this is
19 another document that you're referring to, is that right?

20 A This is the law enforcement -- law enforcement's
21 characterization of what Mr. Dumas told me.

22 Q So, something prepared by someone other than
23 Mr. Dumas, is that right?

24 A That's right.

25 Q Now, I think where we left off before the break is

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1 you indicated that you were familiar with the statement that
2 raised the issue of murder second in that there was an argument
3 at the time of the shooting. Now, were you able to locate that
4 statement in the notes that are provided there?

5 A That was what I was referring to in Maurice Dumas'
6 statement.

7 Q But doesn't give the --

8 A It doesn't say that, but it does say that they
9 were -- implies that they were speaking and there was an
10 exchange between the two and then the law enforcement
11 characterized it as an argument.

12 Q But there's no temporal indication of whether the
13 argument and the shooting took place at the same time, is
14 there?

15 A That's the only logical conclusion is it took place
16 at the same time. I don't think that Maurice Dumas saw them on
17 two separate occasions.

18 Q So, you are making a logical leap there, is that fair
19 to say?

20 A I don't consider it a leap. I consider that a
21 reasonable inference.

22 Q Can you point in Mr. Dumas' statement where it
23 references argument?

24 A That's the reason I read it. If I can have a minute,
25 I'm going to go back to the State's -- okay, this is

1 Defendant's Exhibit 8. There's a conversation there on Page 2
2 on Defendant's Exhibit 8. 'Derrick walked up on the porch and
3 he was pointing his gun and saying, "Man, I will shoot you, I
4 will shoot you, white boy." I then heard someone say, "I'm not
5 bothering you," and then the N-word. I think that's a
6 reasonable inference, taking the view of the defendant's
7 lawyer, that that's an argument and the law enforcement
8 likewise made a reasonable inference that they were arguing.

9 Q So, in your opinion, the years that you've been a
10 defense attorney, you believe that those two statements are
11 sufficient for a murder second instruction?

12 A The judge in this case at the second trial --

13 Q That's a yes or no question.

14 THE COURT: In your opinion, regardless of what the
15 judge may have done, do you have an opinion?

16 A Yes. It's sufficient.

17 BY MR. HAIGH:

18 Q And Mr. Crump, do you have what's been marked as
19 Defendant's Exhibit 7 up there?

20 A Yes.

21 Q I want to read you a couple of these portions here
22 and see if I have this right. The first being in the second
23 paragraph, seven or eight lines down on the first page in the
24 middle it says, 'A few minutes later'.

25 A I have you.

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1 Q Okay. "A few minutes later this -- and then it's
2 indecipherable -- guy named Jerry Rankin walked up to Derrick
3 McRae -- and again, indecipherable -- him for a rock, when
4 Derrick gave Jerry the rock -- blank -- gave Derrick some money
5 he had folded up in his hand.' Does it appear that I entered
6 that correctly into the record?

7 A You did.

8 Q Now, about four or five lines down at the very right
9 hand column, 'A few' do you see where I'm referring to?

10 A Yes.

11 Q All right. 'A few minutes later Derrick unfolded the
12 money that Jerry had gave him and said, "Naw, that motherfucker
13 cheated me. Nobody cheats me." Jeremy said, "Let's go and
14 blast that motherfucker" and Derrick said, "Yeah, let's go kill
15 him," and then, Julio said, "No man, let it go" to Derrick.
16 Derrick, "No. I'm going to blast him." Julio then said to
17 Derrick, "Well, do what you got to do," and about 11:15 p.m.
18 Derrick, Jeremy, and Thurman ran down towards JFK' -- and then
19 there's something that's unclear, and it says, 'The same way
20 that Jerry had gone. At or around 11:30 p.m. I heard one
21 gunshot, about ten minutes later I saw what looks to be
22 Derrick, Jeremy, and Thurman running back up towards my house.
23 When they got to my yard, they stopped and bent over resting
24 their arms on their knees.' Is that correct?

25 A That's correct.

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1 Q All right. Now, further down the same page probably
2 about five lines from the bottom, in from the left and down
3 slightly, 'I heard Johnny,' do you see where I'm referring to?

4 A Yes.

5 Q All right. 'I heard Johnny ask Derrick, "Did you get
6 rid of the gun?" And Derrick told Johnny that he gave it to
7 Thurman to throw in the river. I then came out of my front
8 door and Derrick said, "You Bitch, I know you know what
9 happened, and if you tell, I'll kill your ass." About three
10 days later, I was at my mother's house on JFK Drive and Derrick
11 got into an argument with my mother about what I saw. Derrick
12 said, "Yeah, I'll kill ya'll ass just like I did that white boy
13 Jeremy." He then told me that the night doesn't have eyes. A
14 few days later Derrick began cutting the screens on my windows,
15 and he set a fire on my front porch.' Did I put that into the
16 record correctly?

17 A You did.

18 Q Okay. Now, again, this is a statement from Serena
19 Parker and this is a statement that you testified on direct
20 that the case would be much better had you known about this
21 witness?

22 A That's right.

23 Q All right. Now, it's fair to say that this statement
24 inculpatates Mr. McRae, isn't that right?

25 A That's correct.

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1 Q Okay. Now, would you have put this witness on the
2 stand knowing that this would be the scope of their testimony?

3 A No.

4 Q All right. Now, Mr. Crump, do you have what's been
5 previously marked as Defense Exhibit 6 in front of you?

6 A Yes.

7 Q All right. If you could look at that please starting
8 in the second paragraph about eight lines down with, 'Jerry
9 asked Derrick'. It's in the left margin.

10 A Okay.

11 Q Okay. 'Jeremy asked Derrick, "Do you have any
12 cocaine?" And Derrick replied, "Yeah, do you have the money?"
13 Jeremy replied, "Hell, yeah, I've got money. I'm not on
14 welfare." At this time I told them to leave him alone and that
15 I wasn't going to have them fighting in my yard. A few minutes
16 later the six black males left walking up the sidewalk that
17 goes in front of my house. They were headed towards Palisade
18 Circle. After they left, Jerry asked me what time it was, and
19 I told him it was 10:34 p.m. He told me that he was afraid of
20 those guys and that he was going to his brother's house who
21 lives near the skating rink on Rockingham Road. At about 10:45
22 p.m. I heard a gunshot coming from Palisade pool area. About
23 two or three minutes later, after the gunshot, I saw the same
24 six black males running from the pool area real hard.

25 The only one that I recognized that was running was

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1 Derrick, Tony, and Jeremy. I heard someone say, "Pick up the
2 damn gun," and the black male that was wearing a blue jacket
3 picked up the gun and they all ran behind the apartments
4 towards Rockingham Road. Did I state that correctly?

5 A Yes.

6 Q Okay. Now, you indicated that this was also an
7 important statement for you?

8 A It is.

9 Q Okay. And that was based solely on -- well, let me
10 ask you this. One of the reasons it's valuable in your mind is
11 the specific times given by this witness, is that right?

12 A That's one element.

13 Q Okay. And what are the other ones that make you
14 think this is valuable?

15 A In neither this statement nor Serena Parker's
16 statement, is there any mention of the red truck and, you know,
17 the State perceived it as to a motive to the murder. That
18 Jeremy Rankin came up JFK in a red truck. The transaction took
19 place at the red truck or the dissented red truck. That
20 Derrick was given fake money and then Jerry Rankin sped off in
21 the red truck. Neither this statement nor Serena Parker's
22 statement has anything about the red truck in it. Okay, that's
23 critical.

24 Also, in this statement -- the question I would ask
25 myself is, if Derrick McRae pushed Jerry Rankin and they have a

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1 fight, why would he thereafter shoot and kill him. And then
2 you have the six men, that's a lot of people that somebody on
3 the street says Derrick was involved. Where there is a
4 presence there which doesn't rise to the level of aiding and
5 abetting. So, all those are critical factors.

6 Q Okay. So, I want to make sure I understand --

7 A And also, the timing -- either he's wrong or Jerry
8 Rankin's mother is wrong or he is tremendously mistaken.

9 Q All right. So, just to make sure I understand your
10 testimony correctly, the issues that you perceive give this
11 statement value are the temporal issue, the time issue.

12 A That's right.

13 Q The fact that it doesn't directly inculcate Mr. McRae
14 in that it only provides that he participated, but may not have
15 been the shooter?

16 A Well, I don't think you have anything on here about
17 him being the shooter.

18 Q Right. That's my point, that it doesn't say that
19 he's the shooter, right?

20 A That's right.

21 Q Okay. And the fact that there is an absence of
22 detail with regard to a red truck?

23 A Well, I think it's contrary to the red truck.

24 Q Is there any other vehicle listed there?

25 A No, but, yeah, he walked up. You just don't see the

1 red truck.

2 Q All right. But it's fair to say that if you exit a
3 vehicle, you walk to wherever you're going even to meet people,
4 isn't that right?

5 A No, because --

6 Q So, you're saying that --

7 THE COURT: Let him finish his answer.

8 MR. HAIGH: All right. I'm sorry.

9 A I just think the red truck was very important, and
10 when his mother talked to him, it's brought out that he was on
11 foot so, the implication -- the inference I would make in
12 defending him is that somebody let him out in that neighborhood
13 and he's walking and that it wasn't what Thurmond Nelson says
14 or other people say about a red truck it's just a bogus.

15 Q Well, there's -- I mean, there is no allegation
16 anywhere in the testimony or statements that Rankin's mother
17 was present for any of this, is there? Can you please point in
18 those statements or in the record where that's provided that
19 Mr. Rankin's mother had personal information regarding the
20 events of this case?

21 A Yes. On Page 183 of the second trial, defense
22 counsel asked when it was that she saw her son at Campus
23 Courts -- this is just an extraordinary critical issue because
24 we get into parameters of the time and date, and she said that
25 she saw her son about 10:20 because she left him; she went to

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1 her house and called her daughter-in-law and her
2 daughter-in-law said it was 10:30.

3 Q But that's not at the place. That was at Corpus
4 Campus Courts, right?

5 A That's about 3 miles away.

6 Q Right. But she wasn't on site of the actual drug
7 deal, isn't that right?

8 A One area of cross-examination is -- you're assuming
9 there is a drug deal -- that one area of our cross-examination
10 was, you know, defense was trying to poke holes in this red
11 truck, and she indicated the red truck had been parked at their
12 house for about two weeks. He hadn't driven it in about two
13 weeks.

14 Q All right. But she doesn't have any personal
15 knowledge of what happened at the scene of the drug deal, isn't
16 that right?

17 A Of the alleged drug deal. She was not on -- there is
18 no evidence that -- I believe her name was Janet Rankin was on
19 JFK Drive or Palisade Circle. I don't think there's any
20 evidence of that.

21 Q Thank you. Sir, if you could look at what's been
22 marked as Defense Exhibit 4. Do you have that there?

23 A I do.

24 Q All right. Now, here's another statement and that's
25 the statement of Corey Spencer Robinson, is that right?

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1 A That's correct.

2 Q Now, this is another one that you said was material
3 in terms of the value, is that right?

4 A It is.

5 Q Okay. Now, everything in this statement is hearsay,
6 isn't it?

7 A Let me read this.

8 Q Yeah, please.

9 A You are correct. My understanding is that this can
10 come into evidence is -- Julio is going to have to be there to
11 tie it into Derrick McRae.

12 Q And other than a first name, there is no other
13 identification provided for Julio, is that right?

14 A I think everybody knows who Julio is. Julio
15 Sturdevant, very talkative young man. As best I can recall,
16 Julio is Marnell McRae's boyfriend. That's my educated guess.
17 That's my best memory.

18 Q Okay.

19 A But he was involved -- very talkative, very polite,
20 there is only one Julio.

21 Q Okay. So, you communicated with Mr. Robinson then,
22 is that right? Prior to trial?

23 A I did.

24 Q Okay. And you said he was very polite, very
25 talkative.

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1 A No. I didn't say that.

2 Q You didn't say he was very talkative? I think that's
3 what you -- if you go back on the record, I think your
4 testimony was he's a very talkative young man.

5 A As I understood, you asked about Julio, and I said
6 that Julio was a very talkative young man.

7 Q Okay. Now, you're aware of the relation that Julio
8 had to members of the McRae's family, is that right?

9 A As best I recall, he was Marnell McRae's boyfriend.

10 MR. LAU: Your Honor, I would object to these
11 questions involving stuff outside of these statements which
12 is just additional material that I believe, outside of this
13 record, is trying to establish that perhaps in some
14 speculative world, these inconsistencies in the statements
15 could be reconciled. It's asking questions about
16 relationships with individuals and about, you know, could Ms.
17 Rankin have seen a red truck. All these questions are trying
18 to introduce facts that aren't in the record here to try and
19 bolster these statements which are, as you will see later
20 through additional witnesses, entirely inconsistent with one
21 another, and we would object to any questions going forward
22 along those lines.

23 MR. HAIGH: Your Honor, the witness testified to the
24 value and materiality of these statements. At issue before
25 the Court in this case is, should these statements had not

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1 been turned over, what value did they have, how would they
2 have affected the case, and what I'm trying to figure out is,
3 based upon these statements and Mr. Crump's activities in the
4 case, how they would have affected the outcome. How it would
5 have affected how he prepared for the case and carried out
6 the case which he testified on direct on. So, I think it's
7 fair game.

8 THE COURT: I think both of you have taken advantage
9 of the wide latitude that you've allowed one another and that
10 I've allowed to go into these matters and to attempt to get
11 into Mr. Crump's thought process as he now testifies looking
12 back at this, and I'm going to allow you to proceed as you
13 have been. That objection is overruled.

14 BY MR. HAIGH:

15 Q Now, you said earlier that you met with Julio and
16 talked with him about any potential knowledge that he may have
17 had about the events, is that right?

18 A I did.

19 Q All right. So, arguably, you even had better
20 information and that it was firsthand as opposed to this guy,
21 right?

22 A No, I didn't.

23 Q You said you spoke to him directly, right?

24 A Oh, yes --

25 Q So, wouldn't that be firsthand information?

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1 A Yes, but --

2 Q Okay, thank you.

3 THE COURT: It's not quite that simple, you ask a
4 question, you get to hear the full answer.

5 Go right ahead, Mr. Crump?

6 A A key element is the gun and the murder weapon, and
7 my information somewhere, right or wrong, is that Derrick sold
8 the gun to Corey Robinson. I went to Corey Robinson and he was
9 polite, but not talkative, and if I had his statement that he
10 bought the gun from Julio, I'm going to two people. I'm going
11 back to Corey Robinson and confront him with the statement.
12 Did he make the statement? Was it true? Why did he make it?
13 What were the circumstances? And then I'm going to Julio and
14 say, "Who took it? I'm trying to help Derrick. I got to have
15 the truth. What happened? Did you sell a gun to Corey
16 Robinson?" So, I mean, it would certainly -- it affects my
17 investigation.

18 Q To the extent that you weren't able to follow up on
19 that particular statement, is that right?

20 A That's right.

21 Q Okay. Now, just out of curiosity, what did Julio
22 share with you about his knowledge of that night?

23 A Not much. He -- Julio, he's a very talkative person
24 who doesn't say much, and I think Julio is probably the one who
25 went to the liquor store, if I had to make a guess. You know,

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1 bought the liquor that afternoon and, you know, pretty much
2 just confirmed, as best I recall, he's at the cookout, but I
3 don't have it in my notes a specific thing about Julio.

4 Q So, you took interviews of different people, but
5 didn't prepare notes on what those interviews entailed?

6 A They were sketchy notes. It might be like a one
7 paragraph, something like that, but basically, Julio gave that,
8 you know, gave the liquor store, have a cookout, but I don't
9 have a detailed statement that I put him into bed, et cetera,
10 et cetera, tucked him in, that type of thing.

11 Q Okay. Now, I'd like you to take a look at what's
12 been marked as Defendant's Exhibit 10. Do you have that there?

13 A I do.

14 Q I'm going to read the second paragraph. 'About three
15 days after Jerry Rankin was killed, a friend of mine named
16 Jeremy Sturdevant told me that Derrick McRae and Thurmond
17 Nelson killed Jerry Rankin. Jeremy also told me that Derrick
18 McRae is the one that shot Jerry and that Thurmond was just
19 with him.' Is that correct?

20 A That's correct.

21 Q All right. Now, in the second paragraph, you go down
22 probably about the third or fourth line from the bottom in the
23 right column it starts with 'Derrick.' Do you see that?

24 A I do.

25 Q All right. That says, 'Derrick had a black in color

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1 what looked like .380 handgun.' Is that right?

2 A That's correct.

3 Q Okay. Let's take a look at Defense Exhibit 9,
4 please. Do you have that there, sir?

5 A I do.

6 Q All right. Now, at the last line of the second
7 paragraph, does that say, 'Derrick told me that he had sold the
8 gun to Corey Robinson'?

9 A That's correct.

10 Q And then middle of the second paragraph, close to the
11 left column starts 'Derrick then looked.' Do you see that?

12 A Yes.

13 Q It says, 'Derrick then looked at me and said, "I am
14 the one who blasted that nigger on Fishman's porch." I asked
15 him what he was talking about. Derrick said, "I am the one who
16 killed Jeremy Rankin while he was sitting on Fishman's porch."
17 So, presumably, this would not be a witness that you would put
18 on because it inculcates your client, is that right? Even
19 though there is an inconsistency with the gun?

20 A No. I would have called him.

21 Q All right. And --

22 A But -- but --

23 Q Yeah, please.

24 A In this one, and also, particularly, I'd like to say
25 in the one with Montes Williams, where you've got hearsay

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1 statements of Jeremy Sturdevant. Jeremy Sturdevant was the
2 defense witness and you had to confront Jeremy with this
3 statement and find out, you know, what he said, what he didn't
4 say, the truth of it. You would just have to confront Jeremy
5 with this statement.

6 Q Speaking of Mr. Sturdevant, you were able to -- you
7 called him as a witness in that second case?

8 A I did.

9 Q And he was cooperative with the defense?

10 A Yes.

11 Q All right. He actually refused to make a statement
12 to the State, didn't he?

13 A I don't know that. If that's what your records
14 reflect, that's probably the truth.

15 Q All right. If you could please take a look at
16 Defense Exhibit 5. Do you have that there, sir?

17 A I do.

18 Q Okay. I'd like to start in the second paragraph,
19 probably about nine lines down, the right column it says,
20 'Derrick said.'

21 A Okay.

22 Q 'Derrick said, "Yeah, I blasted that punk white
23 motherfucker, Jerry Rankin --

24 A Wait. Stop. Stop.

25 Q Okay.

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1 A Okay. Go ahead.

2 Q Okay. 'Derrick said, "Yeah, I blasted that punk
3 white motherfucker, Jerry Rankin." I said, "You bullshitting
4 me?" Derrick said "I swear I did." Derrick said that Jerry
5 tried to shit him for some dope, and then parentheses, crack.'
6 And then it says, 'He said, "Jerry grabbed some crack from him
7 and ran." Derrick said that he caught up with him later; saw
8 Jerry on the porch at a house on Hood Street. Derrick leaving
9 his girlfriend's house on Palisade Circle Walkway by the pool
10 on Hood Street when he walked by the house where Jerry was at.
11 Derrick said he run up to Jerry and pulled out a .380 handgun
12 and he shot Jerry in the head while he was on the porch.
13 Derrick said Jerry just dropped and blood ran everywhere. A
14 few days later, Derrick asked me if I wanted to buy the .380
15 handgun. He said he has it stashed.' Is that correct?

16 A That's correct.

17 Q Again, fair to say that there's some inconsistencies
18 there, but in all, it really inculcates Mr. McRae, isn't that
19 right?

20 A It does.

21 Q Okay. And based upon that, would you have called
22 that witness, had you known about --

23 A No, but I sure wish I had this statement when I was
24 investigating and interviewing him or talking -- and let me
25 qualify that. I'm not certain I talked to Darius Lockhart.

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1 We're talking about 18 years later, but I'm almost certain that
2 I did. I'll say it like that. Just going back through my
3 notes, I'm almost certain I talked to Darius Lockhart, but I
4 don't have a recollection and sometimes you remember -- you
5 kind of piece things together, but I feel like I talked to him.

6 Q Okay. All right. If we could take a look at
7 Number 11, Defense Exhibit Number 11, please. Again, with --
8 let me actually get it in. That last statement in that
9 paragraph, 'When I asked him -- and it's referring to Montes
10 Williams -- who did it, he told me that Derrick McRae had
11 killed him.' Is that right?

12 A Yes.

13 Q Okay. Now, irrespective of the inconsistencies with
14 some of those statements, they all are consistent in that
15 Mr. McRae sold the gun. Is that right? It's just who that he
16 sold it to that's at issue?

17 A I don't draw that.

18 Q Okay. One of the things that you brought up on
19 direct is that you felt that it was necessary for the State to
20 place Mr. McRae at the scene with an eyewitness. Is that
21 right?

22 A I do.

23 Q Okay. Now, the State was unable to do that and he
24 was still convicted, isn't that right?

25 A The State convicted Derrick McRae with the motive and

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1 two admissions. And one admission was to a fellow jail inmate.
2 This case was just a scintilla of evidence against Derrick
3 McRae, and my opinion, for a jury to follow their oaths, listen
4 to the evidence, and do their duty that you cannot convict
5 based on that scintilla of the evidence, there has to be
6 something more. You don't have circumstantial evidence, like,
7 you don't have a gun. In my mind, as I analyzed this case,
8 particularly the second case, somehow you've got to place him
9 at the scene. You've got to place him at the scene, and you've
10 got three people who place him at the scene, but in three very
11 inconsistent statements and they place him at the scene -- and
12 when I say at the scene, obviously, Maurice Dumas places him at
13 the scene. The other two people place him at the scene
14 400 yards away with other people.

15 Q I'm not asking your opinion. Thank you for providing
16 it, but I'm asking you a factual question. Isn't it true that
17 Mr. McRae was convicted by a jury of his peers without an
18 eyewitness placing him at the scene of the crime?

19 A Unfortunately, yes.

20 Q Okay. I'm handing you what's been marked as State's
21 Exhibit 3. Do you recognize that?

22 A My memory's refreshed, I'll say it like this, it's an
23 ex parte motion for funds to employ a private investigator.

24 Q Okay. And that was something that you filed in this
25 case; is that correct?

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1 A Yes. That's correct.

2 MR. LAU: Your Honor, may we approach.

3 THE COURT: Sure.

4 (Bench conference was held with both counsel
5 present.)

6 THE COURT: You may continue.

7 BY MR. HAIGH:

8 Q Now, that's a motion that you filed, is that right?

9 A It is.

10 Q Okay. And do you recall whether that was granted or
11 not?

12 A It was granted.

13 Q And that was -- I'm showing you what's been marked as
14 State's Exhibit 4. Now, that's the order granting your motion,
15 is that right?

16 A That's correct.

17 Q And what date was that issued?

18 A July 9, 1997.

19 Q Okay. So, roughly about ten months or so prior to
20 that final trial, is that right?

21 A That's correct.

22 THE COURT: I'm sorry. I think I might have -- I've
23 got a motion in limine to redact certain motions. Number 4
24 was --

25 BY MR. HAIGH:

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1 Q I'm showing you what's been marked as State's Exhibit
2 5. Do recognize that?

3 A I do. Can I go back though? Would you mark this?

4 Q I'm sorry. And that was a motion filed by you?

5 A Yes. Can I read just a second? Yes.

6 Q And what was the date of filing that motion?

7 A This motion is April 17, 1998.

8 Q Okay. So, that would have been --

9 A Ten days before the first trial started.

10 Q Now, you indicated that you never had Mr. Nelson's
11 statement prior to the first trial?

12 A I didn't.

13 Q So, you filed a motion to redact that statement not
14 even knowing what was in it?

15 A Yes, I did.

16 Q Okay.

17 A Can I explain that.

18 Q You've answered my question.

19 THE COURT: Go ahead and explain that.

20 A This is just Defense 101 that -- I don't know that
21 Thurman Nelson's going to testify and my recommendation to
22 Derrick -- I guessed that he would not testify, but what I'm
23 saying here is -- I'm saying based on information believed --
24 he made a statement to law enforcement as to the circumstances.
25 I don't know that he's going to testify, and I don't know that

1 the State or the District Attorney's Office is not going to try
2 to get that statement into evidence and keep him off the stand.
3 That's the reason I'm saying -- I'm protecting my client that
4 if they do that, they are going to have to redact all
5 references to Derrick in order to preserve Derrick's right
6 under Bruton versus United States on Sixth Amendment to
7 confront your witnesses. That's just Defense 101, yes basic,
8 basic defense.

9 Q I'm showing you what's been marked as State's
10 Exhibits 6. Do recognize that?

11 A Yes.

12 Q And what is that?

13 A This is a subpoena.

14 Q Okay. And who was that subpoena of?

15 A The subpoena was to Corey Robinson.

16 Q Okay. And who issued it?

17 A George E. Crump, III.

18 Q Okay. And that's you, right?

19 A That's me.

20 Q All right. So, it's fair to say that Corey Robinson
21 was under subpoena by you for --

22 A That's exactly right.

23 Q Okay. I'm showing you what's been previously marked
24 as State's Exhibit 7. Do recognize that?

25 A Yes.

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1 Q What is that?

2 A This is a subpoena issued by myself to Darius
3 Lockhart.

4 Q Okay. So, you're aware of his potential value as a
5 witness prior to the day in court, is that right?

6 A I'm aware of a potential, that's correct. That's a
7 correct statement.

8 Q Okay. All right. So, I'm showing you what's been
9 marked as State's Exhibit 8. Do recognize that?

10 A Yes.

11 Q What is that?

12 A This is where I subpoenaed Jane Karicka who was a
13 deputy -- who I think was a deputy as opposed to assistant
14 clerk of court, to appear and produce a certified copy of
15 Edward Lewis Tender, and this would have been for the second
16 trial.

17 Q Okay. Presumably, the goal of the certified copy is
18 so you could cross-examine Mr. Tender or put in a rebuttal
19 witness if he testified falsely with regard to his prior
20 history, is that right?

21 A You're ahead of me on that. Let me take this time to
22 make a correction. I stated that I got off the court appointed
23 list in 2005. I got off of the State list in 2006 and then it
24 took about two years to filter it out. I do not read -- as
25 well-versed as I was at one time, you know, on rules of

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1 evidence and impeachment, but keep it clean. I think that
2 regardless of what the facts would be, whatever Edward admits
3 to, I think I could introduce what he's been tried and
4 convicted of under certain circumstances, and that's the main
5 reason as opposed to in his face and confront him and get a
6 yes, no, this, that. Just get Jane Karicka in there. That he
7 was convicted of, I want to say, 16 counts of -- 16
8 misdemeanors, maybe a common-law forgery, something along that
9 line.

10 Q It's fair to say that you were in a position to
11 challenge his record or how he presented it at trial, isn't
12 that right?

13 A I was in a position the second trial. The first
14 trial I'm shooting from the hip as best I can.

15 Q This whole proceeding today is only about the second
16 trial, right?

17 A No, it's not.

18 Q Well, that's the one where Mr. McRae is convicted,
19 isn't that right?

20 A I'm going to let Mr. Lau argue, but I would argue
21 different.

22 Q But needless to say, let me make sure I'm
23 understanding, your testimony is that you were prepared to
24 cross examine Mr. Tender on his criminal history during the
25 second trial, is that right?

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1 A That's correct.

2 Q Now, you had two investigators in this case, isn't
3 that right?

4 A I did.

5 Q Okay. And Jack Fay was one of them, is that right?

6 A Yes.

7 Q Who was the other one?

8 A Charlie Johnson.

9 Q And they were active for -- let me back up. You got
10 the order granting you funds to employ investigators about ten
11 months prior to trial, is that right?

12 A That's right.

13 Q So fair to say that they were active during that
14 period?

15 A No. That's not a fair statement. Can I have just a
16 minute to review my time?

17 Q Sure.

18 A I want to review my time sheet. What I normally did
19 with these two investigators was I would try to conserve time.
20 They would meet me at my office, maybe after lunch or in the
21 morning, and try to do as much as we could at one time. From
22 my time sheets, it says on 9-16-97 I investigated with the PI's
23 and that's an hour and 55 minutes, and then on 12-22,
24 investigation with Jack Fay and Charlie, that's three hours.
25 There's not -- doesn't look like there was a lot of time with

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1 these investigators, but generally, when I went to interview
2 witnesses, I would take these two investigators with me.

3 Q So, they didn't do any independent investigation on
4 their own?

5 A No.

6 Q They were only there for purposes of having a witness
7 for what you --

8 A Yes. And I just think it's wise -- in the last 20
9 years, you know, in a murder case to have somebody with you
10 wherever you go. I just think it's just wise.

11 Q And both of these individuals would be present with
12 you for --

13 A If it said -- like I said, for example, it said back
14 there on 12-22, it said investigation with Jack Fay and
15 Charlie. So both of them would be present. And these are --
16 both of these were law enforcement officers on Long Island or
17 Staten Island. They retired, moved down to the Pinehurst area,
18 and are friends. You get two for the price of one.

19 Q Okay. Now, while we're on that same document, that's
20 the document marked as --

21 A Defendant's Exhibit 13.

22 Q Thank you. Defendant's Exhibit 13. If you could
23 look at the entry that I think you looked at before, September
24 30, 1997?

25 A Yes.

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1 Q That plea discussion with Ken Honeycutt. That's the
2 entry that you're showing there?

3 A That's right.

4 Q Okay. So, Michael Parker was assigned this case, is
5 that right?

6 A The person who tried the case --

7 Q Maybe I can help you out. Let me ask this. From
8 1996 to approximately late March 1998, Michael Parker was
9 assigned to this case, is that right?

10 A I don't know that.

11 Q Do you recall correspondence in this case back and
12 forth between you and the prosecutor's office, in general?

13 A Generally, what I did -- I mean, my office was right
14 across the street. I generally didn't write letters unless
15 there was some reason I wanted to document something, you know,
16 like a motion in the courthouse. Michael Parker, as best I
17 recall, was the chief assistant. Certainly, the chief
18 assistant from December of '96 onward until he left the DA's
19 office. I assume I talked to Michael Parker, I don't know. I
20 probably did talk to him at length unless it's in here. The
21 trial attorney with Scott Brewer. I can't say that I
22 corresponded with Mike Parker.

23 Q Let me ask you this, do you recall whose signature
24 was on the motions for the State that were filed in this case
25 between '96 and about March '98?

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1 A No. If it's Michael Parker, I wouldn't dispute that.

2 Q So, sitting here today you have no personal
3 recollection of any of Michael Parker's involvement in this
4 case?

5 A No. That's correct. But we're talking about 18
6 years ago, and we tried -- no, I don't.

7 Q We're talking about 18 years ago with all your
8 testimony, aren't we?

9 A That's right. That's the reason I brought this.
10 This is pretty much a summary to where I could refresh my
11 memory on anything, but I don't have an independent
12 recollection of talking to Michael Parker.

13 Q Do you recall Ken Honeycutt being the attorney of
14 record at any time in this case?

15 A No.

16 Q Then why meet with Ken Honeycutt to discuss a plea
17 agreement?

18 A To get the best deal possible. That's my educated
19 guess. That's my educated guess.

20 Q Do you recall who in the office was able to negotiate
21 deals, in the prosecutor's office?

22 A You would have had -- Scott Brewer would have
23 authority according to my belief. Michael Parker would have
24 had authority, and Ken Honeycutt. I generally didn't go to Ken
25 Honeycutt. I could probably get a better deal, lower down. I

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1 would have gone -- I would have talked to Michael Parker.

2 Scott Brewer --

3 Q No. I'm sorry. Go ahead,

4 A As a general rule -- as a general rule, I would not
5 have gone very first to Ken Honeycutt. I would have gone --
6 there are only two ways that I would have gone to Ken
7 Honeycutt. One way is that I was across the street and I'm
8 talking to the staff -- I'm talking to Scott Brewer, Michael
9 Parker, and they referred to me, you know -- "Ken is here. Go
10 down the hall. It's something that Ken is going to need to
11 check on." That's one way. The other way I would have gone to
12 Ken Honeycutt -- and this is rare because I'm not going to get
13 as good a deal generally, is that I've gone to one or two of
14 the other people, and I've got as good as I can and I'll try to
15 get something better.

16 Q Now, in murder cases -- your testimony here today is
17 that in murder cases first assistants, or people other than Ken
18 Honeycutt, had authority to negotiate dispositions?

19 A That would be my understanding. It might have been
20 that he's given them authority, you know, on this case, this
21 and this range. I don't know what his conversations were with
22 his -- you know, I don't know if he had a cap. It's just like
23 me selling my car, you know, you can go sell my car, but you
24 can't sell it for less than \$15,000 or \$20,000. I don't know
25 what authority he gave them, but generally, with Ken

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1 Honeycutt -- I would go to an assistant before I'd go to him.

2 Q Okay. And can you please show in your fee summary
3 here where you went to another attorney before him?

4 A Is there one on there?

5 Q I'm asking you?

6 A Okay. Just going through this, I'm reviewing a --
7 looks like you've got a Dorothea Dix report that I'm reviewing
8 September 23, 1997, so I'm probably not doing a whole lot of
9 negotiations before then.

10 MR. LAU: Your Honor, if it's okay with the Court
11 while he reviews that, if we take an afternoon recess. I
12 would appreciate that opportunity.

13 THE COURT: All right. Let's do that. We'll take a
14 ten minute break.

15 (Court in recess for afternoon break.)

16 THE COURT: If you want to repeat your last question,
17 or Mr. Crump, do you recall the last question.

18 MR. HAIGH: I don't recall having one pending
19 actually.

20 BY MR. HAIGH:

21 Q Now, sir, if you wouldn't mind looking at Defendant's
22 Exhibit 16. And is it fair to say that on each of those sheets
23 in the criminal history, it lists initials for an ADA, is that
24 right?

25 A It list what now?

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1 Q Initials of the ADA?

2 A That's correct.

3 Q Now, are you aware whether it's the ADA that was
4 assigned the case or the docket attorney that the clerk lists
5 in terms of initials?

6 A I just don't want to speculate on that.

7 Q Okay, so you don't know?

8 A I don't know.

9 Q Additionally, are you aware what happens to those
10 initials if one DA is assigned the case originally and then
11 another one does the PVH a few years later?

12 A What's PVH?

13 Q Probation Violation Hearing?

14 A I just don't know.

15 Q Okay. So, although you speculated earlier as to the
16 initials of Scott Brewer, you're not sure the manner in which
17 they would arrive on this document or what the surrounding
18 circumstances would be of that?

19 A No, but as a highly educated guess, these would stand
20 for Scott Brewer, but how it got there, I just don't know what
21 the clerk's procedure is.

22 Q All right. Thank you.

23 MR. HAIGH: No further questions.

24 THE COURT: All right.

25 THE WITNESS: Can I make a correction?

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1 THE COURT: Yes.

2 THE WITNESS: The question was asked to me before
3 lunch my experience in murder cases, and I said I had ten
4 cases. I tried two capital murder cases. Then you asked
5 another question, kind of a different phrase, how many capital
6 cases I had, and then I had a recollection of one of those ten
7 cases. There was actually nine cases, Derrick's was tried
8 twice. It started as a capital murder case, but didn't go the
9 whole way. My recollection now, on that third case, my
10 educated guess is that the State started off as a capital
11 murder case, but by the time we got to a jury trial, it was
12 proceeding first-degree noncapital and then go on. I don't
13 have a recollection of that case being more than a three or
14 four day trial.

15 THE COURT: Any further questions about that?

16 MR. HAIGH: No questions.

17 THE COURT: Redirect.

18 **REDIRECT EXAMINATION**

19 BY MR. LAU:

20 Q On that point Mr. Crump, in your experience, you
21 gained familiarity with the hearsay rule?

22 A Yes. Don't ask me the exceptions.

23 Q I won't ask you about the exceptions, but the hearsay
24 rules are for when you're trying to introduce a statement for
25 the proof of the matter asserted with that statement, is that

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1 right?

2 A That's right.

3 Q Now, with respect to these statements, of course, if
4 they're inconsistent and you don't believe they're true,
5 wouldn't they be introduced to establish that they're false?

6 MR. HAIGH: I'm going to object. It calls for legal
7 conclusion.

8 THE COURT: Okay. I'm going to let him offer his
9 opinion about that.

10 A Two things. One is certainly you could question
11 about the inconsistencies, and the second thing is I would have
12 known the rule when I tried it.

13 THE COURT: You can't say?

14 THE WITNESS: I can't say now, and can I have a
15 follow-up.

16 THE COURT: Go ahead with your answer.

17 THE WITNESS: On all those people I subpoenaed, such
18 as Corey Robinson, Darius Lockart, the reason that they are
19 subpoenaed is they didn't incriminate things to me when I
20 talked to them, but in case the State is going to try to slip
21 in hearsay and say well, that's not to prove the truth of the
22 matter asserting or some way, I wanted to have that if Plan
23 B -- to have them in there.

24 THE COURT: Thank you.

25 BY MR. LAU:

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1 Q So, you would have questioned on the inconsistencies?

2 A That's exactly right.

3 MR. LAU: If I may approach, Your Honor.

4 THE COURT: Yes.

5 BY MR. LAU:

6 Q Mr. Crump, I'm handing you what's been marked
7 Defendant's Exhibit 17. If I may direct your attention to
8 Page 75, Line 13. Let me back up -- let me back that -- let me
9 begin with Page 70, Line 24 and at Page 70, Line 24, can you
10 began reading the transcript --

11 MR. HAIGH: Your Honor --

12 THE COURT: Yes.

13 MR. HAIGH: I don't believe that this exhibit has
14 been listed in the record in terms of what it actually is or
15 anything yet so --

16 THE COURT: All right.

17 MR. LAU: I apologize, Your Honor.

18 BY MR. LAU:

19 Q Mr. Crump, I would purport to you that this is the
20 testimony of Thurman Nelson during the second trial in this
21 case?

22 A It appears to be so.

23 Q And you were the attorney of record during this
24 trial, is that correct?

25 A I was.

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1 Q And do you recall Mr. Nelson testifying?

2 A I recall him testifying, and then I reread the
3 transcript in preparation for today, so my memory's been
4 refreshed.

5 Q Thank you. I apologize for any confusion. If I may
6 direct your attention to Page 70, Line 24?

7 A Okay.

8 Q And if you wouldn't mind reading from Page 70, Line
9 24 to Page 75. I'm sorry, Page 71, Line 15.

10 A Question -- and this is cross examination by myself.
11 "Mr. Nelson, would you be kind enough to hand me that
12 statement, thank you. Mr. Nelson, you been charged with
13 first-degree murder. Answer: Yes. Question: In this same
14 case? Answer: Yes. Question: Did you see when Jerry Rankin
15 was shot and killed? Answer: No, sir. Question: Were you
16 present when Jerry Rankin was shot and killed? Answer: No,
17 sir. Question: Did you encourage any person to shoot or kill
18 Jerry Rankin? Answer: No, sir.

19 Q Thank you. You can stop there. Now, Defendant's
20 Exhibit 8, which was read by the State into the record, if you
21 could find Defendant's Exhibit 8. If I could direct your
22 attention to the bottom of Page 3, beginning at where it says
23 'Derrick and Thurman,' approximately seven lines up from the
24 bottom?

25 MR. LAU: If I may approach, I can point out to you,

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1 Mr. Crump.

2 THE COURT: All right.

3 BY MR. LAU:

4 Q The bottom of Page 3. Would you mind reading that to
5 the last line on page 3?

6 A 'derrick and Thurman run down the hill that is in
7 front of the house and started running toward me, and they
8 still had the guns in their hands. I ran to the woods and hid
9 because I was scared they were going to shoot me.'

10 Q You can stop there if you don't mind. So,
11 Mr. Nelson, during his testimony, testified that he was not
12 involved in this crime whatsoever, is that right?

13 A That's right.

14 Q While he was a witness for the State?

15 A That's right.

16 Q And you didn't have the statement?

17 A I had this statement.

18 Q I'm sorry. Mr. Dumas' statement?

19 A No, I didn't. No, I didn't.

20 Q Let me direct your attention to the same transcript,
21 Page 75, Line 13. And if you can begin reading at line 13, and
22 read through line 25?

23 A Question: Between 10:30 and 11:00 on October 13,
24 1995, the same night that you saw Jerry Rankin spinning tires?

25 Answer: Uh huh. Question: You went to the house where

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1 Derrick McRae was staying? Answer: Uh huh. Question: And
2 you went in with Antoine Rush? Answer: Uh huh. Question:
3 Did you see Derrick McRae? Answer: Uh huh. Question: What
4 was he doing? Answer: He was asleep.

5 Q So, the State witness testified that he was asleep
6 between 10:30 and 11 p.m.?

7 A That's correct.

8 Q Now, can I direct your attention to Defendant's
9 Exhibit 6, which is the statement of Larry Parker. And if I
10 can direct you -- and it might be more helpful if I point it
11 out to you?

12 MR. LAU: Your Honor, I'm going to point to where it
13 begins, 'After they left.'

14 THE COURT: All right.

15 BY MR. LAU:

16 Q If you could just read this sentence here?

17 A 'after they left, Jerry asked me what time it was,
18 and I told him it was 10:34 p.m.'

19 Q What was Mr. McRae doing according to the State's
20 witness at 10:34 p.m.?

21 A He was sleeping.

22 Q Thank you.

23 A He was sleeping between 10:30 and 11.

24 Q Thank you. Now, if I could direct your attention to
25 Defendant's Exhibit 7, which is the statement of Serena Parker,

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1 and if you wouldn't mind just reading the first sentence in
2 that statement beginning with on 'October 14th.'

3 A 'on October 14, 1995, at about 10:50 p.m, I was in
4 my apartment located at 912 Palisade Circle in Rockingham.
5 About at this time, I heard some people talking outside my
6 bedroom window. The lights were off in my apartment, and I
7 didn't have a curtain up to the window. So, when I looked out
8 the window to see who it was, I saw Derrick McRae, Thurman
9 Nelson, Jeremy Sturdevant, Johnny McRae, Julio Serrano
10 talking.'

11 Q You can stop there. At 10:50 p.m, according to the
12 State's witness, what was Derrick McRae doing?

13 A Between 10:30 and 11 he was sleeping.

14 Q Thank you. Now, the State asked you whether it was
15 entirely consistent in each statement that Derrick McRae sold
16 the gun. Do you recall that question?

17 A Generally, yes.

18 Q If you don't mind, let me direct you to Defendant's
19 Exhibit 5, which is the statement of Darius Lockhart. If you
20 don't mind, if I can call your attention to the second page of
21 the statement, the second sentence up which begins 'He said,'
22 just above the signature line, the second to last statement to
23 beginning with 'He said.'

24 A 'He said he had it stashed.'

25 Q So, he had the gun stashed?

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1 A That's what that says.

2 Q So, the statements the State has aren't consistent
3 with respect to whether or not Mr. McRae sold the gun, are
4 they?

5 A No.

6 Q Mr. Crump, did you have the complete investigative
7 file of the Rockingham Police Department when you --

8 A No.

9 Q --were defending Mr. McRae in this case?

10 A No.

11 Q You did not?

12 A No.

13 Q And the only materials you had were what was provided
14 to you --

15 A In discovery.

16 Q And that was that general felony discovery form,
17 correct?

18 A That's right.

19 MR. LAU: May I approach.

20 THE COURT: Yes.

21 BY MR. LAU:

22 Q Mr. Crump, I've handed you what's been marked
23 Defendant's Exhibit 18, which is the testimony of Jeremy
24 Sturdevant at Mr. McRae's second trial. If you would, could
25 you begin on Page 214, Line three.

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1 A Okay.

2 Q Can you read from Line three on Page 214 to Line 24?

3 A 'Question: Now, you haven't talked to one single law
4 enforcement officer about this so-called cookout, have you?

5 Answer: Yes. Question: Where? Answer: Both of them.

6 Question: When? Answer: That day it happened. Question:

7 The day the cookout happened? Answer: No, the day they picked

8 Derrick McRae up. They came and picked me up the next day,

9 harassing me. My mama was with me. I go get my mama, she was

10 with me when they was harassing me. Question: You say you

11 told both these officers? Answer: I told them the same thing.

12 Question: About the cookout? Answer: Yes. Question: They

13 didn't write it down for you? Answer: No. I wasn't paying

14 attention. I was telling them. I don't know if they were

15 writing it down or not. Question: You weren't given anything

16 to sign like the other people that testified, were you?"

17 Q You can stop there. So, Mr. Sturdevant didn't refuse
18 to talk to law enforcement?

19 MR. HAIGH: Objection, Your Honor, we have no idea

20 what really happened. We just have the testimony of an

21 individual. Who's to say whether it's truthful or not? So,

22 I'm going to object.

23 THE COURT: I'm going to sustain it as to what his

24 opinion is as to the truthfulness.

25 MR. LAU: That's fine. I have no further questions.

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1 THE COURT: Any further questions?

2 MR. HAIGH: No, Your Honor.

3 THE COURT: Thank you, Mr. Crump. You may step down.

4 MR. LAU: At this time, we would move to have
5 Defendant's Exhibits 17 and 18 admitted, Your Honor.

6 THE COURT: All right. They can be admitted.

7 (Defendant's Exhibits 17 and 18 were admitted.)

8 THE WITNESS: Your Honor, am I free to leave?

9 THE COURT: Any objection.

10 MR. LAU: I would just ask that you be on phone
11 standby should we need your testimony.

12 THE COURT: Yes, sir. You're free to leave the
13 courthouse.

14 MR. LAU: Can we have five minutes.

15 THE COURT: We just had 15 minutes.

16 MR. LAU: We've got the witnesses sequestered.

17 THE COURT: All right. We will be patient.

18 MR. LAU: I apologize, Your Honor, but we would ask
19 Mr. Crump to come up one more time for clarifying question.

20 THE COURT: Okay. All right.

21 MR. LAU: And then we're ready to proceed on our next
22 witness.

23 THE COURT: All right.

24 BY MR. LAU:

25 Q Mr. Crump, just as clarification with respect to one

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1 final question, you have with you today the State's synopsis of
2 this investigation?

3 A That's correct.

4 Q Did you have that prior to the trial in this case?

5 A No, I did not.

6 Q And that was furnished to you by Mr. McRae's post
7 conviction counsel, is that --

8 A That's correct. Some time in 2010 or thereabout.

9 Q Thank you.

10 MR. LAU: I have no further questions.

11 THE COURT: Any questions from the State?

12 MR. HAIGH: No, Your Honor.

13 MR. LAU: The defense calls Edward Tender, Your
14 Honor.

15 THE COURT: All right.

16 The witness, Edward Tender, was sworn and
17 testified as follows to the examination of
18 counsel.

19 **DIRECT EXAMINATION**

20 BY MR. LAU:

21 Q Good afternoon, Mr. Tender. Would you state your
22 full name for the record.

23 A Edward Lewis Tender.

24 Q And Mr. Tender, how old are you?

25 A Sixty-two.

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1 Q And Mr. Tender, you're an alcoholic, is that correct?

2 A Recovering alcoholic.

3 Q And how long have you been sober?

4 A This January will be -- January 3rd will be 24
5 months.

6 Q Twenty-four months on January 3rd?

7 A Yes, 24 months.

8 Q Now, have you taken the steps, over the course of
9 those 24 months, to maintain your sobriety?

10 A Yes. I go to my meetings.

11 Q And what is it that you do with respect to your
12 recovery?

13 A I go to AA meetings. I work in the community and the
14 church, and I mentor two little boys.

15 Q And how frequently do you attend AA meetings?

16 A At least twice a week.

17 Q At least twice a week?

18 A Yeah, twice. When I first started I was going -- I
19 made about a meeting every night.

20 Q Now, are you a religious person, Mr. Tender?

21 A Yes, I am.

22 Q Can you describe your participation in the church.
23 Are you a member of a church?

24 A Yes.

25 Q And what church is that?

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1 A New Bethel AME Zion in Dobbin Heights.

2 Q And do you have a role within that church?

3 A Yes. I'm on the trustee board and on the choir.

4 Q And what is your role as a trustee? What are you
5 responsible for?

6 A I'm responsible for all the property of the church
7 including the building, the van, the building, the parsonage,
8 and all of the real property that new Bethel owns.

9 Q Now, you understand you're under oath today?

10 A Yes, I do.

11 Q And if you may, can we talk about your prior
12 involvement in this case?

13 A Yes, as far as I can remember.

14 Q Do you remember being involved in this case beginning
15 sometime in March 1996?

16 A I can vaguely, yeah.

17 Q You can vaguely remember. What can you remember?

18 A I remember I had to go to court a couple of times. I
19 think it was two times altogether. It's been about 20 years.
20 I'm trying to think back now.

21 Q Now, in March 2013, were you sober?

22 A Yes. I'm trying to count back now. This January,
23 like I said, will be two years. Yes.

24 Q Before discussing March, you previously spoke with
25 counsel for Mr. McRae in this case, is that right? Have you

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1 been spoken with by Mr. McRae's counsel, myself?

2 A Yeah, I spoke with plenty of people.

3 Q Now, do you remember giving a statement in this case
4 sometime in March 1996?

5 A I remember talking. I don't remember exactly what
6 the statement was.

7 MR. LAU: May I approach.

8 THE COURT: Yes.

9 BY MR. LAU:

10 Q Mr. Tender, I handed you Defendant's Exhibit 19. Can
11 you identify what this exhibit is?

12 A It's a statement. I see my name at the top. I don't
13 have my glasses. I lost my glasses. That's my signature at
14 the end.

15 Q Is that your signature at the end?

16 A Yes, sir. A statement at the top, but it's not my
17 writing.

18 Q This isn't your handwriting?

19 A No. That's not my handwriting. I see my name up
20 there. I can hold it off and see my name and that's definitely
21 my signature at the end, but I can't see. Like I said, I lost
22 my glasses.

23 Q Now, in March 1996, were you incarcerated at that
24 time?

25 A '96?

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1 Q At the Richmond County jail?

2 A I was incarcerated in '96, yes.

3 Q In March of '96, do you recall?

4 A I can't recall. It's been over 20 some years ago.

5 My math --

6 Q Do you recall being incarcerated with Derrick McRae?

7 A Yeah. I recall being (inaudible) with Derrick McRae,
8 yeah. It was a lot of other people, they was (inaudible).

9 Q Did you speak with Mr. McRae while he was in --

10 A Yeah. I remember speaking with him. We was in the
11 same cell. I can't remember what block.

12 Q The same cell or the same cell block?

13 A We was in the same cell block, you know, that big old
14 place where everybody is crammed in. Like I said, it's vague.

15 Q Mr. Tender, because you don't have your glasses, I'll
16 read the statement for you, and then I have a couple of
17 questions for you. 'On this day, 26th day of March, 1996, I
18 Edward Lewis Tender, request to speak with Detective JC Britten
19 and Sergeant Voorhees without my lawyer present.' Do you recall
20 ever meeting with law enforcement without your lawyer present?

21 A Not right, you know, not word for word -- -

22 Q 'About two weeks ago -- continuing -- Derrick McRae,
23 who's in jail for murder, came to me and told me he wanted to
24 talk to me. Derrick McRae told me that he walked up on a white
25 boy, Jerry Rankin, while he was on a porch sleeping. Derrick

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1 McRae said when he walked up on the porch, he put a .380
2 handgun to Jerry Rankin's head and shot him. Derrick McRae
3 said that he then took the .380 handgun and hid it in some
4 bushes near the house where he shot Jerry Rankin. Derrick
5 McRae said that about two days later him and two other boys,
6 but I can't remember their names, went back and got the .380
7 handgun and took it and hid it in Chapel Town near Derrick
8 McRae's house. Derrick McRae said that the reason he shot
9 Jerry Rankin was because he was a white boy. Derrick McRae
10 also said that all white people need to die. Yesterday on
11 3-35-1996 -- which I believe should be 25 -- Derrick McRae came
12 to me and said that he was going to kill some of the police.
13 Derrick McRae said he was going to start with Phil Sweat,
14 Detective Britten, Caption McQuay, and he was going to work his
15 way down.' Do you recall this statement?

16 A Not right off hand. Like I said, that was twenty
17 something years ago. I've been through a lot and I can't
18 remember.

19 Q Do you recall Derrick McRae telling these things to
20 you?

21 A Like I said, you know, it's been twenty something
22 years so, I can't remember. My mind has been through a lot.

23 Q Mr. Tender, I don't -- we talked about this before,
24 is that correct?

25 A Yeah.

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1 Q And was your mind substantially better then?

2 A Yes, it was.

3 Q Mr. Tender, I'm handing you what's been marked
4 Defendant's Exhibit 20. Can you identify Defendant's Exhibit
5 20?

6 A I tried to -- like I said, I don't have my -- I see
7 my signature over here.

8 Q Is that your signature?

9 A Yes, it is. It doesn't look like my handwriting
10 because I can even type.

11 Q Now, on March 2013, you previously testified that you
12 were sober during that time, is that correct?

13 A Yes, I did.

14 Q So, during this time in March 2013, you would have
15 been being honest, is that correct?

16 A Yeah.

17 Q You would have honestly been speaking about what it
18 was you remembered from this case?

19 A Yeah, probably was. I had talked to so many people
20 on this case.

21 Q And you've told many of those people -- well, first
22 let's -- if you don't mind, can you read your affidavit,
23 Mr. Tender?

24 MR. HAIGH: I object to hearsay, Your Honor.

25 A Like I said, my eyes are bad. I can't see this.

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1 THE COURT: I'm not going to require that you read
2 it.

3 THE WITNESS: I lost my glasses, Your Honor.

4 THE COURT: That's all right.

5 THE WITNESS: And the VA providing them. I've got a
6 doctor's appointment in the morning.

7 THE COURT: All right. That's fine. Thank you.

8 BY MR. LAU:

9 Q Mr. Tender, Paragraph 11, you said you were being
10 honest. It says, 'I provided false statements to detectives
11 and testified falsely against Derrick McRae to improve my
12 outcomes of my cases'

13 MR. HAIGH: Objection. Hearsay, Your Honor. This is
14 improper impeachment.

15 THE COURT: All right. I'm going to sustain that.

16 MR. LAU: Your Honor, at this point in time, if
17 Mr. Tender is saying that he --

18 BY MR. LAU:

19 Q Mr. Tender, can you examine the contents of this
20 affidavit?

21 A I told you my eyes -- I don't have my glasses. I
22 can't see. Everything is blurry. I lost my glasses.

23 Q If I read this to you, would that refresh your
24 recollection of your statement dated March 21, 2013?

25 A I don't think it would.

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1 Q That wouldn't refresh your recollection?

2 Mr. Tender, is it possible for you to get another pair of
3 glasses and come back and testify for this Court at a time when
4 you do have your glasses?

5 A Like I said -- like I said, it's up to the VA, you
6 know. I'm going tomorrow to see about getting some more. They
7 might get them in the next few days -- a day or two, it's
8 possible.

9 Q So, tomorrow's appointment is to see if you can
10 obtain your glasses?

11 A Yeah, obtain glasses and for the PTSD evaluation and
12 medical evaluation. It will be after 12:30.

13 Q Did Derrick ever tell you, Mr. Tender, that he was
14 involved in the death of Jerry Rankin?

15 A I can't remember, sir.

16 Q Have you testified in other murder trials,
17 Mr. Tender?

18 A Not that my recollection -- like I said, it's been
19 over 20 some years, I can't remember.

20 Q Not in your recollection? Is testifying a memorable
21 thing to you, Mr. Tender?

22 A It used to be when I was younger. I'm 62 years old
23 now, you know, battling with this recovery. It's a lot of
24 other stuff.

25 Q So, your testimony is you don't remember whether

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1 Derrick McRae told you?

2 A I don't.

3 MR. LAU: Your Honor, at this point in time, I would
4 have no further questions, but I would ask to recall
5 Mr. Tender tomorrow afternoon after his appointment in hopes
6 that he gets glasses, and I would have the opportunity to
7 properly refresh the witness with his previous statement.

8 THE COURT: All right.

9 THE WITNESS: I should have them tomorrow.

10 THE COURT: I can't vouch for whether you're going to
11 get your glasses or not by tomorrow.

12 I'm not going to delay the hearing of this matter
13 beyond the next day or two, beyond the time that it otherwise
14 would take us to conclude the hearing. I would agree, if you
15 wish to do so, that you could call him out of order even after
16 the State has presented evidence. I'll leave it open to allow
17 you to do that, but I'm not going to leave it open beyond the
18 normal course of this hearing.

19 MR. LAU: I understand, Your honor.

20 THE COURT: For him to get a pair of glasses. He's
21 answered some questions based on his recollection even
22 without having been refreshed. I'll certainly consider what
23 he's already testified to, and I'm going to give the State's
24 counsel an opportunity to go ahead and cross examine him at
25 this point as to any of the matters that he's already

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1 testified about, if you wish to do so, because I don't know
2 whether he's going to be back here or not. You're not
3 required to do so, I'm just telling you this is your
4 opportunity if you wish to do so.

5 **CROSS EXAMINATION**

6 BY MR. HAIGH:

7 Q Now, Mr. Tender, you testified in two different
8 trials regarding Derrick McRae, right?

9 A Yes, sir. If I can remember correctly.

10 Q Okay. And you were under oath at those times, right?

11 A Yes.

12 Q And you testified truthfully at the first hearing,
13 didn't you?

14 A Yes, sir, to the best of my knowledge. I can't
15 remember.

16 Q All right. And you testified truthfully at the
17 second trial, didn't you?

18 A Best that I can remember.

19 Q All right. Thank you.

20 THE COURT: Any further questions?

21 MR. HAIGH: No.

22 THE COURT: Anything further?

23 MR. LAU: We would ask to reserve.

24 THE COURT: Thank you, sir. You may step down.

25 Give me just one second.

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1 MR. LAU: At this time, the defense would call Robert
2 Voorhees.

3 THE COURT: All right.

4 The witness, Robert Voorhees, was sworn and
5 testified as follows to the Examination of
6 counsel.

7 MR. LAU: Your Honor, at this time, before we start
8 with Mr. Voorhees, I would move to admit Defendant's Exhibit
9 19 and 20.

10 MR. HAIGH: Your Honor --

11 THE COURT: Yes.

12 MR. HAIGH: I object to Exhibit Number 20 in that
13 it's hearsay. I think there's clear law that's particular,
14 even in MARs, about hearsay affidavits not being viable
15 evidence. I object to Number 20.

16 THE COURT: What do you say about Number 20?

17 MR. LAU: We will, at the appropriate time, move to
18 introduce it, Your Honor.

19 THE COURT: All right. I'm going to deny its
20 admission at this point. I will admit Number 19.

21 MR. LAU: Thank you.

22 (Defense Exhibit Number 19 was admitted.)

23 BY MR. LAU:

24 Q Mr. Voorhees, Good afternoon?

25 A Good afternoon.

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1 Q Would you state your full name?

2 A Robert Joseph Voorhees.

3 Q Mr. Voorhees, how are you currently employed?

4 A I'm employed with HO Waltman Trucking Company in
5 Wisconsin.

6 Q And how were you previously employed?

7 A The City of Rockingham as a law enforcement officer.

8 Q And what was your position upon retiring from the
9 City of Rockingham or when you left the City of Rockingham?

10 A I was the chief of police.

11 Q Now, how long were you employed by the Rockingham
12 Police Department?

13 A Roughly 22 years.

14 Q And in 1996, you would have been employed with the
15 Rockingham Police Department?

16 A That's correct.

17 Q And do you recall what your position was in 1996?

18 A I was in the investigation division and, to the best
19 of my memory, I held several different ranks during that
20 timeframe. I think I was a Detective Sergeant.

21 Q And with respect to -- in October of 1996, how were
22 you employed in October of 1996? If you can recall.

23 A I was employed in the detective division, criminal
24 investigations with the City of Rockingham Police Department.

25 Q And can you describe, as part of your employment,

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1 what training you had received at that time for criminal
2 investigations?

3 A At that time, I had received basic law enforcement
4 training with Randolph Community College, many in-service
5 training things. I would have to go back and look at a
6 transcript to tell you exactly what. I did not prepare for
7 that or bring that with me today, but I remember attending
8 several classes such as basic criminal investigation,
9 interrogation. At some point, I enrolled in Richmond Community
10 College and was in their associates program for criminal
11 justice. In '96, I believe I was actively enrolled at that
12 time in October '96. Seems like I finished that somewhere in
13 '98, in that time frame. It's almost 20 years ago. It's hard
14 to remember the exact dates.

15 Q With respect to your training, do you remember
16 anything specifically about how you were trained to document
17 investigations?

18 A Yes. During the many criminal investigation courses
19 I took and within departmental policy and procedures and how I
20 was trained internally, I have a clear recollection of the
21 basics of how we would document things.

22 Q And what were those basics? What would you do to
23 document the investigations that you conducted?

24 A Well, different parts of the investigation would
25 require different documentation. If you're talking about a

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1 piece of evidence, there was an evidence control form, physical
2 evidence, whether it be a handwritten statement from someone --
3 depending on whether the officer wrote it or the individual
4 witness or suspect wrote it -- all those things would be
5 documented differently.

6 Q And how about your investigative activities when you
7 went to a neighborhood? When you knocked on a door? When you
8 made contact with someone? What would you do to document
9 those?

10 A Those would be in officer notes.

11 Q And would those officer notes ever incorporate into a
12 supplemental investigation report or any report with respect to
13 documenting, sort of, what was there in the officer's notes or
14 the detective's notes?

15 A During that time, I knew at one point, officer's
16 notes weren't discoverable and then the rules changed for court
17 procedures and they became discoverable. So, you know, at
18 different times either we'd put them all in the discovery
19 packet and hand them over to the district attorney or we would
20 retain them until such time we were asked for them or had to go
21 to court to use them to testify.

22 Q So, if an officer spoke with an individual and made a
23 note of it, how would other officers be aware that that
24 individual had already spoken with an officer because you
25 did -- how would the next officer know that that individual had

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1 been spoken to?

2 A Within our department, we only had three
3 investigators at any given time. Part of our annual or routine
4 in the morning would be, you know, we'd catch each other up
5 with the status of where things were, especially with the more
6 serious pending cases, and we would let them know what, you
7 know, relevant facts or what new things were appearing in the
8 case or new statements, new evidence, if we got lab reports
9 back, if we talked to a new witness, whatever the case may be.

10 If a witness was talked to, it would be standard
11 procedure for it to be documented and either we'd ask the
12 witness to handwrite his own statement or we would write it
13 ourselves and ask him to sign it or document that it was a
14 field interview or whatever. Like I said, it's several
15 different levels of evidence it may be.

16 Q Were there any master files with respect to cases
17 that the material would ultimately end up in?

18 A There is a master file for every case that the
19 Rockingham Police Department generated at the time, and then
20 there was a master investigation file.

21 Q And what went into the master investigation file?

22 A All the work product of the investigation.

23 Q Everything?

24 A Yes.

25 Q So, officer notes would eventually make it into that

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1 file?

2 A Yes.

3 Q When you respond to a crime scene, just generally,
4 can you tell me what it is that you do initially at the scene?

5 A What type of crime scene?

6 Q A homicide. When you respond to a homicide can you
7 tell me what typically was your actions?

8 A Well if -- as the investigating officer or the
9 assigned detective or detective on call at the time, which as I
10 recall at that time I was, you would go to the crime scene,
11 speak to the responding officers. You would document what you
12 found, the weather, what it was like, your physical
13 observations, what you saw yourself. At that point, you have
14 to make a determination whether you are able to process the
15 crime scene or you would request assistance from an outside
16 agency to come assist you in processing the crime scene, which
17 in this case, I believe that's what occurred.

18 Q Now, I just want to clarify, you said there's a
19 master case file for every case?

20 A Yes, sir.

21 Q Is that right? And then, I think you said, there is
22 a master investigator case file for every case. Are there two
23 files?

24 A For every crime that gets reported to the Rockingham
25 Police Department, at that time -- I can't testify to what

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1 currently happens today. But at that time, a master incident
2 file was created, an incident file. If an investigation was
3 opened up into the crime, an investigation file was opened up
4 subsequently.

5 Q So, can you tell me what the difference between the
6 two -- what would be in the master incident file versus what
7 would be in the master investigative file?

8 A In the incident file, it would just be the original
9 officer's incident report and his supplement reports that were
10 filed by the officers and a subsequent arrest report, if an
11 arrest was made, and any preliminary investigation that was
12 done prior to the investigation file being opened.

13 Q What warranted a supplemental report?

14 A If something was changed or new evidence was brought
15 to the original officer's attention that he didn't add to the
16 original report that was pertinent to the original crime that
17 was wrote on the O2.

18 Q And all these were the practices of the Rockingham
19 Police Department in October of 1996?

20 A Yes.

21 Q Do you recall the investigation of Jerry Rankin's
22 death?

23 A I recall the incident, yes.

24 Q What do you recall from the investigation?

25 A I was not the only investigating officer in the case.

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1 I remember being called out that night to the crime scene. I
2 remember requesting the assistance of the crime scene
3 investigator from the Richmond County Sheriff's Department to
4 come out and process the scene. I remember subsequent
5 following up the investigation. I remember there being a time
6 period between the time of the incident and the actual arrest
7 in the case. There was -- I would consider it to be a
8 significant -- in other words, it wasn't a couple weeks, it
9 seems like it was months at least, I don't know the exact time
10 period.

11 I remember the name of the individuals that were
12 charged. I remember there being two trials, and much more
13 specifics than that is all. I haven't reviewed the case. I
14 haven't looked at the case. I haven't worked for the police
15 department in over two years. I haven't actually seen the case
16 file itself in probably, well, over five to seven years. So,
17 anything that I would testify to without refreshing my memory
18 or looking at the file would all be speculation.

19 Q Do you still have any notes personally from this
20 case?

21 A No, I do not.

22 Q So, in your possession or --

23 A No, I do not.

24 Q Was there ever a doubt that this was a homicide? Was
25 there ever a period when it was in question whether or not a

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1 homicide occurred or whether or not it was a suicide or any
2 other sort of cause of death?

3 A I don't remember if I attended the autopsy or
4 somebody else attended the autopsy. I do remember that the
5 medical examiner ruled it a homicide, fairly. There was not
6 much question after his autopsy.

7 MR. LAU: If I may approach, Your Honor.

8 THE COURT: Yes.

9 BY MR. LAU:

10 Q Mr. Voorhees, I'm handing you what's been marked
11 Defendant's Exhibit Number 21. Can you identify this exhibit?

12 A If you'll give me just a moment to review it.

13 Q Sure. Take your time.

14 A It looks to be partial what I would recognize as an
15 autopsy report from the medical examiner's office. I remember
16 them being a lot more than just four one-sided pages.

17 Q Let me hand you what I've marked as Defendant's
18 Exhibit 22 and that may help you out. Can you identify
19 Defendant's Exhibit 22, Mr. Voorhees? Do you recognize what
20 this document is?

21 A Yes. It appears to be the medical examiner's
22 examination report and toxicology report of the autopsy of
23 Mr. Jerry Rankin.

24 Q And do these documents help refresh your recollection
25 on when it was that the autopsy took place and the medical

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1 examiner reviewed the body?

2 A Yes.

3 Q On Defendant's Exhibit 21, can you see there at the
4 bottom that date of the medical examiner's review?

5 A Twenty-one on the bottom.

6 Q Of the first page.

7 A I can make out the 10 and 14 are the first two
8 numbers. The last two I'm going to assume say 95, but the
9 handwriting is poor.

10 Q And does this form indicate a manner of death?

11 A It says probable cause of death gunshot wound to the
12 head.

13 Q And below that, do you see where it says manner of
14 death?

15 A Homicide.

16 Q So, at the time the medical examiner viewed the body,
17 it was apparent from that time that it was a homicide?

18 A Yes.

19 Q Now, as the sergeant, the investigative sergeant,
20 what were your responsibilities with respect to the other
21 investigators on staff?

22 A I want to make it clear that I'm not testifying to
23 exactly what my rank was at the time.

24 Q Okay.

25 A I was in the investigation division. I'm not

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1 absolutely sure when I was promoted to Detective Sergeant.

2 Q I understand.

3 A But I was in the investigative division. I did hold
4 the rank of investigator, and I was one of the investigators on
5 this case.

6 Q When you were the investigative sergeant, what was
7 your responsibility with respect to the roles and things?

8 A Well, in that time, there was two other individuals
9 in the police department, a Captain and a Detective Lieutenant,
10 that would have had operational control over me, you know, over
11 the investigation department that we would report to. As a
12 Sergeant, I was more or less the first line supervisor, the
13 on-site supervisor, although that night, I was the only one
14 there.

15 MR. LAU: May I approach.

16 THE COURT: Sure.

17 BY MR. LAU:

18 Q I'm handing you what's been marked Defendant's
19 Exhibit 23. Do you recognize what Defendant's Exhibit 23 is?

20 A It is a one time used form at the police department
21 for reporting felonies to the District Attorney's Office.

22 Q Now, on the upper left-hand corner, Defendant's
23 Exhibit 23, it is the investigative officer and it says RJ
24 Voorhees, is that you?

25 A Yes.

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OFFICIAL COURT REPORTER

1 Q And what was your rank at the time?

2 A At the time this report was filled out, it says I was
3 Detective Sergeant.

4 Q Now, in preparing this report, what would you do to
5 prepare this report?

6 A I would sit down and fill it out based on the best of
7 my knowledge and the knowledge contained in the investigative
8 report to give a summary to the district attorney of what
9 information we had.

10 Q Would you review the case file?

11 A Yes.

12 Q And would you review the statements and the notes and
13 whatever was there in the case file?

14 A Yes.

15 Q Why was that important?

16 A Well, filling out this report would be our first
17 communication with the district attorney to allow them to know
18 what was contained in the case file until such time we did
19 discovery, and it would give them an idea of what was in
20 possession of the police department and if they needed any
21 further review for indictment or whatever, they could ask for
22 it immediately before they received the entire packet.

23 Q So that which was listed here was the materials that
24 were in the case file?

25 A Correct.

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OFFICIAL COURT REPORTER

1 Q And the purpose of this was to communicate what those
2 materials were to the district attorney?

3 A Correct.

4 Q On that report that you have in front of you, does
5 that indicate a defendant?

6 A Yes. It indicates two defendants.

7 Q And who are the defendants in the case?

8 A Thurmond Nelson and Derrick McRae.

9 Q Now, on the top of that form, is there a primary
10 defendant that that felony report is in reference to?

11 A Yes. One had been filled out for everyone that was
12 charged.

13 Q Okay. Who is the primary defendant with respect to
14 the form that I just handed you?

15 A In respect to the form it was Thurmond Nelson.

16 Q Thank you. Now, if you don't mind, turning the
17 felony report that you have in your hand to Page 4 where it
18 lists witnesses?

19 A Yes, sir.

20 Q Now, that's where you begin listing out what evidence
21 specifically that the police department has in its file, is
22 that accurate?

23 A Yes, at that time. It's important to note this was
24 done at time of the arrest and just because the arrest occurred
25 the investigation didn't stop.

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1 Q The investigation didn't stop?

2 A No.

3 Q At the time of the arrest. Now, those investigative
4 records, those also would be in the master file, would they
5 not?

6 A Yes.

7 Q Mr. Voorhees, I'm going to hand you another felony
8 report, this being marked Defendant's Exhibit 24. Do you
9 recognize this report?

10 A Yes.

11 Q And again, who is responsible for creating this
12 report?

13 A Appears to be my handwriting.

14 Q And who was the primary defendant with respect to
15 this report?

16 A Derrick McRae.

17 Q And again, this report would summarize the evidence
18 for the District Attorney's Office?

19 A Correct.

20 Q Do you recall prior communication, Mr. Voorhees,
21 where you indicated that the Rockingham Police Department no
22 longer had a master case file on this case?

23 A No, I don't.

24 Q Do the District Attorney's Office, post conviction
25 lawyers, or anyone else associated with this case?

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1 A I don't have a clear memory of it. I do remember
2 someone called and I can't remember if it was the District
3 Attorney's Office or someone else called and asked if we had
4 the file and we maybe looked for it. During that time, we had
5 renovated the police department. We actually moved our offices
6 twice during the renovation and many things were reshuffled,
7 stored, and put in storage. This case was closed. At the
8 time, we didn't know of any pending court appeals or whatever
9 and we did not -- the day I was asked, the file was not on
10 premises at the Rockingham Police Department, physically in the
11 building.

12 Q Mr. Voorhees, I'm handing you what's been marked
13 Defendant's Exhibit 25. Do you recognize what Defendant's
14 Exhibit 25 is?

15 A It appears to be a file containing some of the
16 original work product from the case against Thurmond Nelson and
17 Derrick McRae.

18 Q Now, on the spine of that, would that binder -- would
19 that indicate that that's the RPD's file for this matter?

20 A That is part of the filing system, yes, sir. It
21 indicates the type of crime and the original OCA number, but
22 just a cursory look at it, it looks to be two files that were
23 merged together and one of them is just not complete. It's
24 missing a lot of the information that's indexed in it.

25 Q Which file is missing a lot of information?

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1 A Well, you handed this to me as one file. I would
2 have to say if you're handing this to me --

3 Q Well, what do you think does not belong in the file?

4 A There is nothing in here that I would say doesn't
5 belong. If it's work product, everything belongs in there.
6 But what I'm saying is there is several things in here that are
7 indexed that are just completely not there.

8 Q By indexing that they are, what are you referring to?

9 A I'm saying that if I created this file, and it
10 certainly doesn't look like my work product, anything that was
11 indexed -- the crime scene, evidence statement, witness
12 statements, suspect info, autopsy report, report synopsis --
13 all those are tabbed and indexed, but yet when you turn to the
14 tab there is nothing there.

15 Q So, your belief is something should be behind each of
16 those tabs?

17 A Yes.

18 Q Mr. Voorhees, I'm handing you what's been marked
19 Defendant's Exhibit 26, and I'm going to ask you to take some
20 time and compare what's in Defendant's Exhibit 26 to what's in
21 Defendant's Exhibit 25 and ask you if Defendant's Exhibit 26 is
22 a true copy of the material in Defendant's Exhibit 25 prior to
23 any post conviction matters which I understand may be --

24 A Okay. You're ready for this? I mean, you're asking
25 me to do something that I can't do in five minutes.

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1 Q I understand, but it's important?

2 A Well, indulge me and I'll be glad to do it.

3 THE COURT: We'll indulge you.

4 THE WITNESS: He's asking me to do something
5 that's --

6 MR. LAU: Thank you.

7 (Witness reviews Exhibits 25 and 26.)

8 THE COURT: Mr. Voorhees, how far along are you?
9 I'm not rushing you. I'm just trying to get an idea of where
10 our time is.

11 THE WITNESS: At this point, I'd be willing to say
12 that they are a fair representation of each other. They are
13 not exact by any means. One contains some stuff from trial
14 that obviously couldn't be in the investigation report. Some
15 things are dated after my tenure with the police department. I
16 can't testify as to how they got in there or why it's missing
17 from one and not the other. To say it's a fair representation
18 of each other, I would say, yeah.

19 THE COURT: Does that satisfy you?

20 MR. LAU: That would satisfy me. I don't know if it
21 satisfies Mr. Haigh.

22 MR. LAU: If I may just ask the witness.

23 THE COURT: Sure.

24 BY MR. LAU:

25 Q With respect to the investigative documents that are

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1 included in Defendant's Exhibit 26 and those that are included
2 in the file Defendant's Exhibit 25, those are accurate
3 representations of the investigation conducted by the RPD and
4 the records that they have with that investigation?

5 A I can't speak for 400 officers whose signatures are
6 in this file and one of them whom is dead at this point. I can
7 speak for my work product and my work product only.

8 Q Now, as the individual who conducted the felony
9 report or drafted the felony report to the District Attorney's
10 Office, you would have reviewed all of the materials though,
11 isn't that correct?

12 A I would have access to them all, yes sir.

13 Q And you would have reviewed it when providing that to
14 ensure that you had all the material provided to the District
15 Attorney's Office that it needed?

16 A I'm quite sure I would have transcribed addresses,
17 phone numbers from one to the other.

18 Q And reviewed the statements?

19 A I'm not sure whether I would have sat there and
20 reread the statements just filling out a name and address on a
21 felony report, no, sir.

22 Q Would you have known the substance of the statements?

23 A Yes.

24 Q Because you would have discussed them with the other
25 officers, is that right?

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1 A I would have physically read them myself, been
2 present for them, or discussed them, yes, sir.

3 Q Now, with respect to the materials in Defendant's
4 Exhibit 26 -- let me ask you this first. How important are the
5 first few months of the investigation from your experience?

6 A Generalizing, the first part of any investigation is
7 always critical and when you tend to receive the most
8 information, but the breaking information or the most important
9 piece of information can come months, years, decades later from
10 a crime.

11 Q Now, of course, on October 14, 1995, medical
12 examiners said that this was a homicide, correct?

13 A That's correct.

14 Q So, your investigation would have began on
15 October 14, 1995?

16 A Investigation would have started whatever time I was
17 called to the crime scene during that incident, my
18 investigation.

19 Q Do the records of the Rockingham Police Department
20 have any investigative records in it from October 14, 1995
21 through the end of October 1995?

22 A I have no direct knowledge, sir, what's in the
23 current files at the Rockingham Police Department.

24 Q Well, you have a copy of it there. Are there any
25 investigative notes in your copy that you have there,

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1 Defendant's Exhibit 26?

2 A I'm not sure I understand the question. Try me one
3 more time.

4 Q Well, I'm asking you is that the Rockingham Police
5 Department's file, which is what you looked at when you did the
6 felony investigative report or what you had access to, should
7 it contain records from the month of October 1995 identifying
8 Mr. Rankin dead on a porch on Hood Street?

9 A Anything to do with the case, yes, sir, it should be
10 in the investigative file.

11 Q Anything to do with the case. And you were
12 investigating during that period of time, am I correct?

13 A That's correct.

14 Q So, I'm asking what's in the file that I've handed
15 you that indicates what took place during the investigation
16 after Mr. Rankin was found dead on Hood Street until the end of
17 October?

18 MR. HAIGH: Your Honor, I'm going to object at this
19 point. This is irrelevant. If you look at the claims that
20 are presented before this Court, none of them deal with the
21 investigation of Rockingham Police Department or this
22 particular witness. It's all about statements or recanted
23 testimony. So, I object to the relevance at this point.

24 MR. LAU: Your Honor, if you are aware there is a
25 Brady claim about the cumulative evidence withheld.

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1 Additionally, at the time the MAR was filed, the prior
2 representations to counsel was that this record did not
3 exist, that the master case file was lost, and you heard
4 testimony to that extent or lost or somehow not in the
5 possession of the Rockingham Police Department. So, this
6 only came to our knowledge after it was inadvertently, or
7 advertently, I don't know, after it was revealed to us in
8 response to a public record request that we made relating to
9 this case and our preparation for this hearing. So, I
10 believe it does add to our Brady claim especially the cattail
11 one, and if necessary, we would have amended this point in
12 time to include that on the basis of what we learned through
13 this testimony.

14 MR. HAIGH: May I respond, Your Honor.

15 THE COURT: Yes.

16 MR. HAIGH: If you look at the actual statute, they
17 are required to file an amendment at least 30 days prior, so
18 it's a barred. Actually, evidence is already started, that
19 locked it in at that point. They could have filed one before
20 evidence started today and we would have had an opportunity
21 to continue the case at that point. They didn't do so.
22 Moreover, if you look at what we're talking about here, these
23 are materials that were provided months ago from our office
24 so they did have awareness of what was in the file, and I
25 know that Mr. Lau went to the Rockingham Police Department to

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1 personally review those records. We have a videotape of that
2 process, and that happened several months ago as well.

3 MR. LAU: Your Honor, I would say this in response to
4 that. The same statute that Mr. Haigh refers to discusses
5 our opportunity to amend at the conclusion of this hearing
6 based on the evidence presented. The problem with the
7 State's position is that this Court will see that the records
8 do not exist from the response by the Rockingham Police
9 Department until February 21, 1996. There is nothing there.
10 Now, can we file a Brady claim on the basis of nothing? We
11 need to talk about what took place during that period of
12 time. Whether or not there were potentially favorable
13 evidence that should have been turned over, and we didn't
14 have that opportunity until today, until we got to ask
15 questions of Mr. Voorhees and other investigative officers if
16 Mr. Voorhees can't answer those questions.

17 Furthermore, there may be a claim, if it's
18 established in his testimony -- we have to have the testimony
19 come out today and amend as required by the testimony. If the
20 exculpatory evidence is purged in bad faith or favorable
21 evidence is purged in bad faith, then under Arizona versus
22 Youngblood, which is a Supreme Court decision, that's a due
23 process violation entitled in our client to relief. We're
24 simply trying to understand why it is that this investigation
25 seems to have only -- not only given to the District Attorney's

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1 Office only statements and evidence that are inconsistent or
2 inculpatory of Mr. McRae and everything else seems to be purged
3 from the record. What we're trying to learn was, was those in
4 the record and what's the reason it was purged. And that's
5 where this is going.

6 MR. HAIGH: Your Honor, I would just make one
7 distinction before the Court and that is defense counsel is
8 right, that they can be amended at the close of the evidence,
9 but they can amend with regard to relevant evidence of a
10 claim that is already made, not a completely new claim, and
11 that's the distinction here. This is something that is --
12 they're limited by what's before the Court once evidence
13 started here today.

14 MR. LAU: And as I said, we made the claim. It's a
15 Brady claim that says that we weren't provided certain
16 evidence and we're just trying to see what, in addition,
17 wasn't provided to have a full understanding of the record of
18 what happened in this case.

19 MR. HAIGH: Your Honor, we're here for a hearing, not
20 a fishing expedition. This is something that should've have
21 been done ahead of time.

22 THE COURT: Let me be sure I understand. You have
23 had everything that's in Defendant's Exhibit 26?

24 MR. HAIGH: Your Honor, this is something that I
25 provided to the defense.

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1 THE COURT: Right. I thought when we had the bench
2 conference, the last few pages didn't --

3 MR. HAIGH: There are materials that I have never
4 seen before that was provided directly to defense counsel
5 from Rockingham Police Department. At least, that's my
6 understanding.

7 THE COURT: But you didn't provide those.

8 MR. HAIGH: No, I did not. But this witness, again,
9 you know, it's long past his tenure there.

10 THE COURT: I don't think it's fair for you to be
11 surprised by materials in this packet that have not been
12 reviewed yet. I would otherwise be inclined, as I have been
13 all day long, to let you gentlemen inquire of this or any
14 other witness about these documents if there is no unfair
15 surprises.

16 Now, the documents themselves, whether they fall
17 within a claim that's been asserted, I'll decide. And it may
18 be that they indeed do not, but for purposes of this hearing
19 and not having to play games with what -- not to play games,
20 but having to decide what goes before a jury and what doesn't
21 go before a jury, I'm inclined to hear everybody out. It may
22 very well be that this does not come with any of those claims,
23 and your argument is well taken with respect to what they may
24 do at this point. I don't know whether you're going to try to
25 find some way in your present claim to go into that. You've

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1 indicated you think you can do that. I'm going to give you the
2 chance.

3 MR. LAU: We have to understand what it is that's
4 missing.

5 THE COURT: I just said I'm going to give you that
6 chance, but you understand what I'm saying about the claim's
7 been filed for months and months and months if we're going to
8 go on what there is here, but I'm going to give you a full
9 and fair opportunity. I'm going to give both of you a full
10 and fair opportunity to ask about these documents.

11 Noting the time, why don't we just stop here today
12 and take whatever time you need in the course of the evening to
13 look over your additional documents.

14 And you say you just got these additional documents
15 today?

16 MR. HAIGH: Yes, when counsel went up to the bench
17 with that exhibit.

18 THE COURT: All right. And I understand this officer
19 is from the Rockingham Police Department, and sir, you wanted
20 to retake custody of your file.

21 THE WITNESS: I would, sir.

22 THE COURT: All right. And you can be back with us
23 at 9:30 in the morning with your file?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Thank you.

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1 Anything further this afternoon.

2 MR. LAU: No, that would be all.

3 THE COURT: We'll be in recess till 9:30 tomorrow
4 morning.

5 (Court adjourned at 5:00 p.m.)

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8 END OF VOLUME I OF III

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STATE OF NORTH CAROLINA)

)

COUNTY OF RICHMOND)

C E R T I F I C A T E

I, Patrice B. Lee, the officer before whom the foregoing proceeding was taken, do hereby certify that the foregoing pages, inclusive, are a true, correct and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my name,
this 29th day of November, 2016.

Patrice B. Lee

Patrice B. Lee, CVR-CM
Official Court Reporter
Superior Court
704-287-3609